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SRINAGAR (KASHMIR.

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BORROWER'S NO.	ISSUE DATE	BORROWER'S NO.	ISSUE DATE

LAWS

OF

JAMMU AND KASHMIR.

(Being a colleetion of all the enactments, whether passed by the Praja Sabha and assented to by His Highness the Maharaja Bahadur or made and issued by His Highness, and in force in the Jammu and Kashmir State).

VOL. I.

1945 TO 1977.

ADVOCATE
The Ranbir Government Press
JAMMU.
CENTRAL BOOK DEPOT
BOLD

Published under authority of His Highness' Government,
Jammu and Kashmir.

JAMMU:

Printed at The Ranbir Government Press—2-10-97—1,000

1941

PRELIMINARY NOTE.

1. As the laws of the Jammu and Kashmir State wer found scattered in various Regulations, Notifications Orders, Ailanns etc. made and promulagated by His Highness the Maharaja Bahadur from time to time, in addition to the Regulations enacted by the State Legislative Assembly called the Praja Sabha since its inauguration in 1934, it was sometimes very difficult to trace the correct and up-to-date law on any particular subject and, as amendments were formerly generaly made by Notifications in the Gazette which were not separately published, even when one traced any particular Ailan or Order one could not be sure that it had not been repealed or amended Some of these Notifications, Orders and Circulars could not be found in every office or court and even copies of some of the old Regulations were extinct. In order to remove this long felt difficulty Government decided to publish a collection of all the existing laws of the State in book form, and for this purpose the services of Lala Badri Nath, Deputy Registrar High Court, were placed at the disposal of the Law Department. Lala Badri Nath was entrusted with the duty of collecting all the laws and arranging them for publication. He has done this difficult task under the personal supervision of the Hon'ble Law Minister and has also revised the proofs. It is hoped that this publication will meet a long felt need and will be of great help to the administration and the public.

2. All the unrepealed Acts of the last fifty years *i. e.* from 2nd Assuj 1946/ 16th September, 1889, when the first issue of the Government Gazette was published, as also all important Notifications, Orders etc. having the force of law, have been included in this book. All amendments have been incorporated in the text of the original Acts and, with respect to each amendment, a foot-note has been appended giving reference to the amending enactment as well as to the issue of the Government Gazette in which the amending enactment was published. This has obviated the necessity of publishing separately these amending enactments which having served their purpose need no longer remain on the statute book. All such Acts upto 1995 have been expressly repealed by the Repeal of Certain Enactments Act, 1996. Even those not so formally repealed have been omitted from this book. In the case of formal amendments of general application, such as substitution of " Government Gazette " for " State Gazette ", " Act " for

" Regulation " etc., reference to amending enactments has not been given in the foot-notes as that would have served no useful purpose and would have resulted in unnecessary congestion. A list of such amending enactments has, however, been separately given below.

3. Acts have been arranged in chronological order in this book, which is being published in three volumes, and in the beginning of each volume besides a chronological table of the contents, an alphabetically arranged list of Acts contained in the volume has been added for facility of reference.

4. Wherever in any Act there is a reference to another Act since repealed reference to the corresponding section of the present Act is also given in a foot-note.

5. The text of the Acts is the original text as passed or enacted, but in the case of certain old Acts or Notifications which were originally published in Urdu, an English translation has been made and incorporated in this book, with a note in the beginning to that effect.

6. Legislative powers in the State have always been inherent in His Highness the Maharaja Bahadur of Jammu and Kashmir and no piece of legislation is complete unless sanctioned by His Highness in one form or another. With respect to every enactment an entry has been made that it was so sanctioned or assented to, giving date of receiving the assent or reference to order conveying sanction of His Highness. Difference in language of these entries is due to the different forms of administration of the State prevailing at different times.

7. Every care has been taken to incorporate all the amendments in the text but in view of the difficulties encountered in collecting these amendments scattered here and there in the records of the last fifty years the possibility of an occasional mistake or omission cannot altogether be ignored. It is, therefore, requested that if any mistake is detected, it may kindly be intimated to the Secretary to Government, Law Department, for issuing a correcting slip.

JAMMU.

SECRETARY TO GOVERNMENT,

Law Department.

List of Amending Enactments or provisions referred to in para 2 of the Preliminary Note.

1.	Notification 1-L/1982, published in Government Gazette dated 5th Jeth 1982.	"Jammu and Kashmir Government Gazette" substituted for "State Gazette".
2.	Notification 11-L/1984, published in Government Gazette dated 9th Magher 1984.	(i) "His Highness' Government Jammu and Kashmir" substituted for— "His Highness in Council", "His Highness the Maharaja Sahib in Council", "His Highness the Maharaja Sahib Bahadur in Council", "His Highness the Maharaja Bahadur in Council", "His Highness the Maharaja in Council", "The Council", "The State Council", "The Jammu and Kashmir State Council". (ii) "Government" substituted for "Durbar", "Kashmir Durbar", "Jammu and Kashmir Durbar".
3.	Notification published in Government Gazette dated 5th Jeth 1985.	"District Judge" or "Sessions Judge" as the case may be, substituted for "Chief Judge".
4.	Notification published in Government Gazette dated 10th Sawan 1986.	"Inspector General Customs and Excise" substituted for "Superintendent Customs and Excise".
5.	Section 2(ii) of Act II of 1993.	"Right of prior purchase" substitutted for "pre-emption".
6.	Section 31(4) of Act XIV of 1996.	"Act" substituted for "Regulation".

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Errata.

Page 2 in line 14 *for* 'Programmes' *read* 'Programme'.

Page 32 in Form D line 7 *for* 'Regulation' *read* 'Act'.

Page 36 in lines 2, 6, 24 and 28 *for* 'Bank' *read* 'Banks'.

Page 36 in line 5 *for* 'India' *read* 'Indian'.

Page 130 in line 2 *delete* mark '2' *before* the words [the Government].

Page 369 in footnotes line 2 *delete* 'the' *before* 'His Highness'.

Page 373 in line 20 *for* 'Book' *read* 'Books'.

Page 374 in line 1 *for* 'Book' *read* 'Books'.

Page 381 in line 33 *delete* ';' and *put* '—' *between* 'aforesaid' and 'eight'.

Page 382 in line 4 *put* '—' *between* the words 'assessed' and 'the'.

Page 382 in line 24 *for* '*Haqi*' *read* '*Haq-i-*'.

Page 395, after section 35 draw a line to show that printed matter below that line is separate from the text of the Act.

Page 395, in last line of footnotes *for* '1905' *read* '1995'.

Page 410 in footnotes line 2 *for* '1996' *read* '1986'.

Page 495 in line 1 *for* '1971' *read* '1977'.

Page 502 in footnotes line 1 *for* '5 ( )' *read* '5 (1)'.

Page 663 in footnotes line 1 *for* '4-L/86' *read* '3-L/86'.

Page 891 in section 15 para 2 *for* '(3)' *read* '(2)'.

Page 892 in section 20 line 1 *delete* '(1)'.

Page 982 in section 253 line 4 *delete* '(1)'.

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LIBRARY
UNIVERSITY OF KASHMIR
SRINAGAR

THE JAMMU AND KASHMIR GOVERNMENT GAZETTE ACT, 1945.

Act No. XII of 1945.

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[Translated from original in Urdu published in Government Gazette dated 2nd Assuj 1946.]

THE JAMMU & KASHMIR GOVERNMENT GAZETTE ACT, 1945.

Act No. XII of 1945.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council on 14th Phagan 1945).

WHEREAS it is expedient for the better administration to start the publication of Government Gazette within the State, His Highness in Council is pleased to command as follows:—

1. This Gazette shall be called the [1][Jammu and Kashmir Government Gazette].

2. It shall be [2]published every week on Monday unless [3][the Government] fix any other day in this behalf.

[1]Title of the Gazette was substituted by Notification 1-L 1982 published in Government Gazette 5th Jeth 1982 for "State Gazette".

[2]The day of issue of Gazette is Thursday now *vide* Finance Department Notification No. 21, dated 4th July 1927 published in Government Gazette dated 10th Sawan 1984.

[3]In Sections 2, 3, and 4 for the words 'His Highness in Council" the words "the Government" substituted by Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

3. There shall be published in the Gazette all Ains and Orders relating thereto duly passed by [1][the Government], all Departmental Orders, Notifications and Circulars, appointments of Gazetted officers and their transfers, leaves, dismissal and suspension.

4. [2]This Gazette will have as many parts as necessary.

IN PART I. All Ains and Orders issued under the authority of His Highness and [1][the Government] shall be published.

IN PART II. Commands relating to the movement of the Army issued from time to time under the authority of [1][the Government], Orders of the Revenue, Finance and Commerce, Public Works, Judicial and other Departments relating to the administration of the State shall be published.

IN PART III. The tour programmes of His Highness and that of the High British Indian Officers such as that of the Lieutenant Governor, the Governor General of India, the Commander-in-Chief of India, shall be published if His Highness so direct.

IN PART IV. The Notifications issued by Civil, Revenue and Criminal Courts for the information of the litigant public shall be published.

5. The Officer-in-Charge of the Press, shall be responsible for the proper and timely publication of the matters pertaining to each department and for the correctness of every order printed therein.

[3]**6.** The notices issued by the Civil Courts in pursuance of the provisions of the law in force may be published subject to payment of the charges at the rate of annas 2 per line per insertion. The charges shall be realized by the Civil Courts from the person at whose request a notice is issued and amount realized shall be remitted to the Superintendent Press.

[3]**7.** Any member of the Public may, on an application to the Officer-in-Charge of Press, get his advertisements published on payment of the charges at the rate of annas 2 per line per insertion.

8. A copy of the Gazette shall be supplied free of cost to—

Prime Minister,
Commander-in-Chief,
Members of the Council,
Governors,
Wazir-i-Wazarats,
Presiding Officers of the Courts,

[1]In Section 2, 3, and 4 for the words "His Highness in Council" the words "the Government" Substituted by Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[2]The present arrangement of the Gazette is different.

[3]For present rates see Finance Department Notification No. 21, dated 4th July, 1927 published in Government Gazette dated 10th Sawan 1984.

Revenue Officers,
Tehsildars,
Munsiffs,
Public Prosecutors,
Inspectors of Schools, and
Higher Police Officers.

All officers in receipt of free supply of the Gazette shall keep bound volumes of the issues of the Gazette duly collected at the end of the year.

[1]**9.** Any person may subscribe to the Government Gazette on payment of a subscription of Rs. 6 per annum.

10. All orders on the annual reports of Revenue, Judicial, Military, Public Works, Police, Jail and Medical Departments passed by [2][the Government], shall be published in the Gazette, if their publication is sanctioned by [2][the Government].

11. Every entry in the Gazette shall be presumed to have been made under the orders of a competent authority.

An order published in the Gazette may be proved to have been issued by production of a copy of the Gazette in which it may be found printed.

12. The [3][Government] shall frame proper rules for the regular publication of the Gazette.

THE RULES REGARDING USE OF FLOATING SKINS, 1946.

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[1]Annual subscription per annum is Rs. 10 now *vide* Finance Department Notification No. 21, dated 4th July 1927 published in Government Gazette dated 10th Sawan 1984

[2]In Section 10 for the words "His Highness" the words "the Government" substituted by Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[3]In Section 12 for the words "Member-in-Charge of the Press" the words "Government" substituted and second Paragraph "Rules and Orders framed shall be submitted to the Council for Sanction" deleted by Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[Translated from original in Urdu published in Government Gazette dated 1st Phagan 1946.]

THE RULES REGARDING USE OF FLOATING SKINS, 1946.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Resolution No. 41 published in Government Gazette dated 1st Phagan 1946)

1. WHEREAS it is expedient to prescribe law for obtaining a licence for the use and possession of floating skins and

Whereas it is necessary to prevent the use and possession of floating skins by persons addicted to theft and stealing of cattle, it is enacted as follows:—

2. A person intending to keep and make use of the floating skins shall submit an application in writing to the Tehsildar of his place on a stamp paper of anna one.

3. The Tehsildar may on the recommendation of the Lambardar of the village or in the case of inhabitant of a town or city on that of two respectable inhabitants of the town or city, in which applicant resides, grant the licence to the applicant in the form prescribed in this behalf.

4. A person holding a licence under Section 3 shall be bound not to use a floating skin for the commitment of an offence.

5. Any person found in possesssion of a floating skin without a licence after this law has come into force shall be liable to punishment of a fine which may extend to fifty rupees or with simple imprisonment which may extend to one month or with both. The floating skins found in his possession shall also be liable to forfeiture and sale to a person holding a licence in this behalf.

6. It shall be the duty of a Lambardar to collect all unclaimed floating skins within his circle and send them to the nearest police station. The floating skins received at the police station shall be kept there for a period of one month, and if no claimant appears during that term or claim put forward is not proved may be sent to the Tehsildar having jurisdiction in the Tehsil for sale by public auction.

A Lambardar guilty of an infringement of the rules shall be punished with fine which may extend to ten rupees.

7. A licence to swim on skins shall be granted only to those persons who may reside near a river and may require it for *bona fide* purposes of agriculture, grazing of cattle or pertaining to office of shepherd or trade or for some other lawful object.

8. These rules shall be published for general information in every publication of the Government Gazette for two months before they come into operation. They shall be made known by a beat of drum within those towns, tehsils and thanas where the inhabitants are in the habit of keeping floating skins.

9. All persons residing in a village and all other persons who keep and use floating skins in a village shall be served with a notice through the Lambardar to obtain licences within the prescribed period.

10. These rules shall not apply to persons authorised to make use of floating skins by the Government.

11. A Register of licence holders in the form appended hereto, shall be kept at every tehsil.

12. Every licence shall be granted for a period of two years and a licence holder shall be at liberty to obtain renewal thereof in the prescribed manner at the end of that period.

13. The Police shall be bound to produce before a Magistrate any person who may be found to have infringed any of the Rules. Skins recovered from any such person shall also be produced.

FORM OF LICENCE.

By this licence————————son of————————caste————————(Occupation)————————resident of————————is permitted to keep floating skins numbering————for the use of swimming in the————river at————for the purpose of agriculture or grazing of cattle or pertaining to office of shephard or trade or for such other lawful purposes and to use the same from————to ————————.

Signature of the Tehsildar.

NOTE.—The licence holder may, if he wants to get the licence renewed after expiry of the prescribed period apply in the prescribed form to the Tehsildar of the Tehsil concerned.

Form of Register regarding Licence Holders.

1	2	3	4	5	6	7	8	9	10	11
Serial No.	Name of licence holder with parentage and caste.	Occupation.	Residence.	Number of floating skins (in figures and words).	Date of grant of licence.	Date of termination of licence.	Name of river or village or place where floating skins will be used.	Name of Lambardar or respectable person or persons certifying character of licence-holder.	Objects for which licence obtained	Remarks

[*Translated from original in Urdu published in Government Gazette dated 11th Har 1947 and Government Gazette dated 29th Maghar 1949.*]

RULES REGARDING ARMS AND AMMUNITION 1946.

(Memorandum dated the 18th Phagan, 1946. Vide Resolution No. 11 contained in the Council Proceedings dated the 10th June, 1890, together with Circular No. 78 regarding the addition of Section 7 sanctioned by the Council, vide Resolution No. 24, dated the 24th December, 1892.)

1. No person except the subjects of the State residing within the State territory, shall manufacture, convert or sell or offer for sale, or keep any arms, ammunition, etc., except under a licence and in the manner and to the extent permitted thereby.

Nothing herein contained shall prevent any person from selling any arms or ammunition, etc., which he lawfully possesses for his own private use to any person who is not by any rules, for the time being in force, prohibited from possessing the same; and nothing shall render any person liable to punishment who, in compliance with an order of the Government or of such military officer who is empowered to make such order, manufactures or converts any arms or ammunition, etc.

2. The President of the State Council or such other officer whom the President authorises in this behalf, can grant such licences, and the licences shall be in the form appended.

Nothing herein contained shall prevent any subject of the State from selling arms, ammunition, etc., which he possesses for his own private use to any person who is a subject of the State, and such subjects may sell any arms or ammunition etc. to any inhabitants of a foreign territory. The restriction in respect of a licence for keeping arms, ammunition, etc., shall be considered to have reference to the inhabitants of a foreign territory.

3. All licences shall expire at the end of Chet of that year for which they are granted and shall be subject to those conditions which are endorsed thereon ; but, before the expiry of the term of any licence, only that officer by whom the licence was granted, can renew the same.

4. The President of the Council or any other officer who is empowered to grant licence under these rules, may in his discretion, refuse to grant, or renew any licence or refuse permission for granting the same; but the officers who are authorised to proceed under these rules, shall discharge their duties subject to the control of the President of the Council.

5. Whoever, in violation of a condition subject to which licence has been granted, does or omits to do any act, shall be punished with simple or rigorous imprisonment for a term which may extend to six months or with both.

6. Whoever being a subject of foreign territory, purchases any arms or ammunition, etc., from any person not licensed or from any licence holder except under a licence and in the manner and to the extent permitted thereby, shall be punished with rigorous imprisonment for a term which may extend to six months or with both; and the magistrate trying the case, may, in addition to the above punishment, direct that the whole or a part of those arms or ammunition, etc., and utensils or carriage or transport animals used for transporting them, and any box, bundle or load in which such arms, ammunition, etc., are concealed, together with the contents of the box, bundle or load, be confiscated.

7. Whoever being a subject residing within the State territory, sells or offers for sale any arm or ammunition etc. to any inhabitant of a foreign territory who is not a licence holder, shall be liable to the same punishment which is prescribed for a purchaser in the foregoing section i. e. in Section 6.

FORM A.

Licence for manufacturing, converting or offering for sale or keeping arms and ammunitions etc.

Name etc. of the licence holder with residence.	Place of business, factory or Shop.	Description of arms.		Description of ammunition etc.		Date of expiry of the term of licence.	Remarks.
		To be manufactured.	To be stocked and sold.	To be manufactured.	To be stocked and sold.		

CONDITIONS.

A. The licence holder shall enter all the arms manufactured or converted and all ammunition etc. manufactured and all stores in stock and sold, in registers Nos. 1 and 2 or in such other registers which the Government may, from time to time, prescribe and shall keep account.

B. The licence holder shall show when so ordered his store and books of manufacture and sale to any magistrate or police officer not below the rank of the Superintendent of Police.

C. The licence ho'der shall not sell arms, ammuntion etc. to any resident of a foreign territory.

FORM B.

Licence for the sale of arms and ammuniton etc.

Name etc of the licence holder with residence.	Place of business.	Description.		Date of expiry of the terms of licence.	Remarks
		Arms.	Ammunition etc.		

CONDITIONS.

A. The licence holder shall enter a statement of all the store in stock and of all the sale in Form No. 3 and 4 or in such forms which the Government may, from time to time, prescribe and shall keep the account.

B. The licence holder shall show, when so ordered, his store and books of sale to any magistrate or police officer not below the rank of the Superintendent of Police.

C. The licence holder shall not sell arms ammunition etc. to any resident of a foreign territory except one who has obtained a licence under these rules.

FORM NO. 1
STOCK BOOK.

.....father's name..... caste..... .....residence..... .....

Particulars.	Date.	Description.											Name and address of the shopkeeper or factory which supplied the articles received.	Signature of the licence holder.	Remarks.
		Fire-arms.		*Other kinds of arms.*											
			Guns.	Pistols.	Swords.	Bayonets.	Daggers.	Other Arms.	Ammunition etc.						
2nd January. 1st January.		Stores in stock ...													
		Manufactured ...													
		Received...													
		Sold ...													
		Stores in stock ...													

Form No 3 shall be like the Form No. 1 except that in the heading the words "licence for sale etc." instead of the words "licence for manufacture etc." shall be entered, and the word "manufactured" shall be deleted from column (2).

FORM NO. 2.

Daily sale book .....father's name..... .....caste ..... residence .....

The person to whom licence for manufacturing, converting or selling the arms and ammunition etc. has been granted.

Date.	Name of purchaser together with father's name.	Caste and occupation of the purchaser.	Place of residence of the purchaser.	Articles purchased.	Price.	Signature of the purchaser and the shopkeeper.

Form No. 4 shall be in accordance with Form No. 2 except that the words "licence for sale etc." instead of the words "licence for manufacture, convertion etc." shall be entered in the heading.

Proceedings of a Meeting of the Jammu and Kashmir State Council held at Srinagar on Friday the 12th August 1898 at 12 noon.

READ Assistant Resident's letter No. 2948, dated 21st June 1898, stating that the Government of India deem it desirable that full control should be exercised by the Durbar over the possession and sale, by their subjects, of Fire-arm and Ammunition in Jammu and Kashmir, with a view to prevent the possibility of weapons reaching countries beyond the limits of the territories of His Highness; through the medium of traders or otherwise and that, therefore, it has been proposed:—

(1) That the sale or gift of Rifles or Ammunition by European visitors direct to His Highness' subjects or other Natives of India in Jammu and Kashmir, and its dependencies be prohibited, except with the sanction of the Resident in Kashmir.

(2) That, sales of Arms and Ammunition in Kashmir be made only through shops, agencies or persons properly licensed in Srinagar.

(3) That, sales and purchases in the case of Arms and Ammunition manufactured beyond the limits of Jammu and Kashmir, should only be made in Srinagar, through the agencies or persons above referred to.

The foregoing rules, the Resident observes, will prevent any gift or sale of Rifles by European visitors in Kashmir to any of His Highness' subjects, except with his previous knowledge. It is, however, equally desirable that a parallel check should be placed on the sale and possession of Arms by His Highness' subjects also. It would, therefore, seem desirable that a registration system should be introduced for all State subjects excepting, perhaps, those not less in rank than Tehsildar. The Resident, therefore, suggests following additional rules also for the consideration of the Durbar:—

(1) That an annual stamped licence on Kashmir eight annas stamped paper be issuable for the possession of every private gun or rifle by all subjects of His Highness below the rank of Tehsildar.

(2) That Provincial Governors be instructed to complete lists of all Fire-arms of every kind, owned by all persons not under the rank of Tehsildar within the limits of their charges.

(3) That these lists be checked periodically by the Governors and that reports be submitted half yearly by them to the Vice-President showing that this has been done.

(4) That the licence papers be issued by the Provincial Governors who should have authority to refuse licence to any

persons whom they may consider not fit to possess them.

These rules would not apply to the Imperial Service or Regular Troops, or State Police, or to the house-hold of His Highness the Maharaja, or Raja Sir Ram Singh K.C.B., and Raja Sir Amar Singh, K.C.S.I., or such persons as the Durbar, with the consent of the Resident, might wish to exempt under order from the operation of the rules.

That the same rule should *mutatis mutandis* be made applicable to Poonch where the registers will be kept up under the orders of Raja Baldev Singh who will submit them half-yearly to the Vice-President for information, the income from the system being creditable to Poonch Revenues.

That in the Jagirs of Raja Sir Ram Singh Sahib K.C.B., and Raja Sir Amar Singh Sahib, K. C. S. I., the rules applicable to Poonch might usefully be adopted, the list of Arms and Returns of Licence holders coming to the Vice-President.

But that in the case of the smaller Jagirs the controlling authority might well be vested in the State under the Provincial Governors.

[1]That any infringement of the rules should render the offender liable to a punishment not exceeding a term of imprisonment for six months or a fine not exceeding Rs. 1,000 or both, and that the cases might be triable by the Raja Sahibs named and the Provincial Governors for the places subject to their jurisdiction.

The Resident requests that the matter may receive early consideration of His Highness the Maharaja and the State Council.

Laid before the Council by the Vioe-President under His Highness' orders No. 1514, dated 1st July 1898.

RESOLVED unanimously on 10th August 1898:—

(1) That the Darbar approve of the proposed rules in their entirety.

(2) That in the opinion of the Darbar it would fully answer the purposes intended by the Imperial Government, if instead extending the rules to the whole State their operation was restricted to Kashmir Province including Gilgit, Ladakh and Skardu.

(3) That the view expressed above receives material support from the fact that the entire population of Jammu Province is composed of martial races who are generally possessed of Arms and it would be extremely inconvenient to issue licences to all of them without any corresponding advantage.

(Published in Government Gazette dated 14th Basiakh 1972, with corrigendum in Government Gazette dated 18th Magh 1972.

[1] For amendment see order, dated 13th March, 1934 infra,

[*Translated from original in Urdu published in Government Gazette dated 10th Katik 1985.*]

NOTIFICATION NO. 29.

9th Assuj 1985.

Regarding hearing of appeals by the Revenue Minis'er against the orders of Governor Kashmir passed under the provisions of Arms Rules.

As proposed by Foreign and Political Minister and re-commmended by the Cabinet, His Highness has been pleased to sanction (vide Cabinet Secretary's endorsement No. 3227, dated 23rd September, 1928) that appeals against the orders of Governor Kashmir passed under the provisions of Arms Rules shall in furture be heard by the Revenue Minister.

This Notification is published for general information.

(Sd.) .....

REVENUE MINISTER,

Jammu and Kashmir Government.

OFFICE OF THE MINISTER FOR REVENUE AND AGRICULTURE.

26th March 1931

No. 56. In pursuance of the orders of the Cabinet, receiv-ed under Cabinet Secretary's endorsement No. 833, dated the 21st November 1930, all Gazetted Officers are hereby exempted from taking out licences for possession of firearms including revolvers and pistols.

(Sd.) R. DUBE,

MINISTER FOR REVENUE AND AGRICULTURE.

(*Published in Government Gazette dated 20th Chet 1987.*)

NOTIFICATION.

Dated Jammu, the 15th December 1933/1st Poh 1990.

No. 11-L of 1990. Rules to regulate the importation of arms into the State under a British Indian Licence for the possession and carrying of arms, sanctioned by His Highness the Maharaja Bahadur (vide Hon'ble Prime Minister's No. PB-1173, dated 13th December 1933).

1. All persons in possession of a British Indian Licence and importing arms into the State will be required to pay a fee of Re. 1 for a smooth bore gun,

Rs. 2 for a rifle and

Rs. 3 for a pistol or revolver,

with effect from 1st March 1934 at the first customs post of entry into the State.

2. Licences of arms brought in by travellers for their own use (either brought in by themselves or sent ahead or following them within a reasonable period, to be determined on the merits of each case) will be inspected by the officer-in-charge Customs at the first post of entry into the State, and any firearms not covered by licence produced by the owner or servant duly authorised in this behalf will be detained at the customs post.

3. The officer-in-charge of the customs post will give in each case a receipt to the owner describing the particulars of the weapon detained by him and shall report the facts to the Government for orders. On the receipt of Government orders the weapon shall be delivered to the owner or shall be deposited at such other place as the Government may direct in this behalf. It shall always be open to the owner to produce a licence and take delivery of the weapon on payment of the fee chargeable thereunder.

4. To facilitate the description of a weapon and its identification the manufacturer's marks which are easily identifiable may be noted and in case there are no such marks the system of stamping the arm with serial number of register containing the full description may be adopted.

5. The power of detaining arms conferred by Rule 3 shall be discretionary, and the fact of detention shall immediately be reported to the Inspector General of Police with full details, and to the Director of Visitors Bureau in the Province of Kashmir.

6. Arms detained under Rule 3 and not claimed by any one for a period of 6 months shall be forfeited to His Highness' Government and may be disposed of as follows:—

(a) Arms and ammunition which can be utilized by any

department of the Government may be retained and brought into use, with the sanction of the Government by that department. Arms and ammunitions not so retained may be sold to licensed dealers or other persons entitled to possess them.

(b) Any arms and ammunition so disposed of may be broken up locally and the materials sold.

7. At each customs post of entry into the State there shall be kept a register in the following duplicate form:—

LICENCE FOR THE POSSESSION AND IMPORTATION OF ARMS UNDER THE BRITISH INDIAN LICENCE.

No.——————————Dated——————————

1	2	3	4	5	6	7	8	9	10
Serial No.	Name, description and residence of licensee or agent (if any).	Number of arms	Description, including manufacturer's marks.	Description. / Weight in seers. / Number.	Purpose for which required.	Value of the firearms per piece.	Period for which the licence is valid from——19 . to——19 .	Amount of the fee levied.	REMARKS.

8. The duplicate forms shall be duly filled in signed and sealed by the official in charge of the post and a copy of it will be delivered to the owner.

9. The entries in the Register shall be legibly written.

10. The licences thus granted shall be valid for a period of one year unless the Government otherwise directs in this behalf and may be renewed by the authority granting it after the expiry of the period specified in the licence.

11. If two or more people hold a joint licence in respect of the same weapons each must be charged the fee specified in Rule 1.

12. On the form of the licence described in Rule 7 shall be printed the following conditions:—

(a) This licence is granted subject to the provisions of the "Kashmir Visitors Rules" in force in the State.

(b) The licensee shall not use any arms covered by this licence otherwise than in good faith for the destruction of wild animals.

(c) He shall not lend any arms or ammunition covered by this license to any person other than a member of his family, or servant who may be employed by him.

(d) He shall forthwith give information at the nearest Police Station of the loss, or theft of any arms and ammunition covered by this licence.

(e) This licence shall be void if the licensee commits a breach of any of the conditions or if the licensee dies or if any weapon covered thereby is sold or is attached in execution of a decree.

(f) A competent authority appointed in this behalf by His Highness the Maharaja Bahadur has the right to enquire at any time during the currency of the licence whether any weapon for which it has been granted is still in possession of the licensee and to require production of the same for the purpose of such enquiry.

13. No licence will be necessary for persons exempt under the provisions of the Indian Army Act and under rules applicable to British India from the operation of the Arms Act of British India. But soldiers not serving with the colours and employed under a civil department shall not be exempt.

14. His Highness the Maharaja Bahadur may from time to time by a Notification published in the Government Gazette exempt any person or any class of persons or exclude any description of any arms or ammunition from the operation of any prohibition or direction contained in these rules.

By command of His Highness the Maharja Bahadur,

(Sd.) BARJOR DALAL,

JUDICIAL MINISTER.

[*Published in Government Gazetted dated 28th Poh 1990.*]

ADVOCATE

OFFICE OF THE JUDICIAL MINISTER.

ORDER.

13th March 1934.

As it is expedient that infringement of rules relating to firearms and ammunition in Kashmir Province should be punished by Magistrates like any other criminal offence, His Highness the Maharaja Bahadur is pleased to command that State Council Resolution of 12th August 1898 shall be amended and in future infringement of the rules mentioned above shall be punishable by a Magistrate having jurisdiction.

By command of His Highness the Maharaja Badadur.

(Sd.) BARJOR DALAL,

JUDICIAL MINISTER.

[*Published in Government Gazette dated 2nd Chet 1990.*]

[*Translated from original in Urdu published in the Judicial Circular Vol. I. P. 12.*]

SURVEILLANCE OF BAD CHARACTERS.

NOTIFICATION NO. 13.

Dated 28th Katik 1949.

(*Sanctioed by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 29 dated 2nd Jauuary 1892.*)

Every person whose name is entered in Register No. 10 pertaining to bad characters shall obtain a permit ticket from the Police Station concerned when he intends to go to some other place from his place of residence and where ever he sleeps for the night he shall report to the Officer-in-charge of the Police Station of that Ilaqa or in his absence to the lambardar or chowkidar that he is bad character of such name and description and on that ticket shall get the attestation of the Officer-in-charge of the Police Station or signature of the lambardar or chowkidar as the case may be. On his return he shall get it attested that he stayed there for so many days. On his return to his residence he shall produce that ticket in the Police Station concerned wherefrom it was issued.

Whosoever infringes the aforesaid Rule shall be liable to punishment for offence under [1]Section 143 Ranbir Dand bidhi (disobeying order duly promulgated.)

As to the circumstances under which name of a person shall be entered in Register No. 10, separate detailed Rules will be issued by the General Department for guidance.

———

[*Translated from original in Urdu published in Government Gazette dated 6th Jeth 1954.*]

SURVEILLANCE OF BAD CHARACTERS.

Register No. 10 and Register No. 9.

CIRCULAR.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Resolution No* 3 *contained in the State Council proceedings dated 17th April 1897.*)

It has been ordered (*vide* Notification No. 13 sanctioned by State Council Resolution No. 29 dated 2nd January 1892) that culprits entered in Register No. 10 are liable to punishment under [1]Section 143 in case of infringement of provisions of the said Notification. No Rules, however, have been issued to determine circumstances under which name of a person should be entered in Register No. 10. The following Rules are, therefore, issued and in accordance with these rules the Superintendents of Police will enter the names of bad characters in Register No. 10. [2]The appeal against the order of the Superintendent of Police shall lie to the Sessions Judge. The Police in accordance with these Rules is also competent to enter the names of bad characters No. 9. It will be sufficient that in Register No. 9 names of those persons are entered who have been convicted and sentenced of cognizable offences excepting offences under special or local laws as is provided in the rules.

1. A person shall not be entered in Register No. 10 unless one or more of the following facts are satisfactorily proved against him:—

(a) that he is in the habit of committing cognizable offences.

(b) that there is apprehension of commission of offences on his part as there is no check on his movements

[1]Section 188 Ranbir Penal Code.
[2]See Notifiction No. 124 infra.

and as his name is not entered in Register No. 10 and he is not subjected to surveillance.

(c) that he has no ostensable means of subsistance and is released on security for good behaviour.

Explanatoin.—A person who is proved to have been previously convicted thrice of cognizable offences shall be understood to be taken as "habitual offender."

2. When the Superintendent of Police on his own accord or on the report of any officer subordinate to him, may deem it proper to enter the name of a person (coming under the purview of Rule 1) in Register No. 10, he will hear the objections of that person and after fully satisfying himself will order that his name shall be entered in Register No. 10 subject to any condition which may be considered proper to impose.

3. In order to comply with an order made under Rule 2 a Register in accordance with the form already in vogue shall be kept and maintained and it will be known as Surveillance Register or Register No. 10 and in it the names of all persons as provided in the above rules shall be entered. This Register shall not be destroyed.

4. On title page of the Register a list of villages and towns situated within the jurisdiction of the Police Station alphabetically arranged with serial number, will be given on the left side and reference to the pages of the register opposite each entry on the right side will be given.

5. For each village and town so arranged alphabetically as many pages will be allotted as are considered proper.

6. At the end of the Register sufficient number of pages will be left apart to enter the names and descriptions of such persons whose residence is not known but frequently visit the illaqa of that Police Station.

7. Name and description of each culprit shall be entered as far as possible on pages allotted to that village or town wherein he ordinarily resides or which he frequents.

8. This Surveillance Register will be kept as a confidential document of the Police Department and its contents will not be disclosed except to proper officers of the Department, District Magistrate or higher officers, in ordinary course of business.

9. Police surveillance shall comprise such close watch over the movements of the person under surveillance, by Police Officers village headman and village watchman, as may be practicable without any illegal interference.

10. The Sessions Judge, Superintendent of Police or any other Officer empowered by the Government in this behalf, shall examine such entries in the Register from time to time. They shall have power to remove the names of persons

from the Register on account of good behaviour or for some other reasons. In case such officer is other than the Superintendent of Police, he shall inform the Superintendent of Police of such removal of names. A bad character may apply to the Superintendent of Police for the removal of his name from the Register on the ground that entries of good behaviour have been made in his favour and the Superintendent of Police may, after making enquiry, pass proper orders on such application. [1]Appeal from such order also shall lie to the Sessions Judge.

Entries in Register No. 9 by Superintendent of Police.

11. Irrespective of the fact whether a person is entered in Register No. 10 or not, a Register will be maintained in the office of the Superintendent of Police of each Province in the Form already prevalent, for entering the names of persons who are convicted of any of the cognizable offences.

12. Entries in this Register will be made in accordance with the report of subordinate officers in case—

(a) order is not appealable, immediately on receipt of the report.

(b) order is appealable but no appeal is filed, after expiry of period of limitation of appeal.

(c) appeal is filed, on receipt of report that appeal is rejected and sentence is maintained.

13. It will be the duty of every Court Inspector or Assistant Court Inspector, or any official appointed to conduct cases that he should report immediately to the Superintendent of Police about the decision of cases referred to in the aforesaid Rule for making entries in the Register.

Register Book of Police Station.

14. In every Police Station a Register known as Conviction Register according to the prescribed form will be kept and maintained in which names of all those persons shall be entered who have been convicted of cognizable offences and who reside within the jurisdiction of that Police Station or visit that Ilaqa and in this Register all proved crimes shall also be recorded.

15. All the provisions of Rules 4 to 7 of this Circular with respect to Register No. 10 will apply to Register No. 9 i.e. Police Station Register just as those are applicable to Register No. 10.

[1]See Notification No. 124 infra.

16. In accordance with the aforesaid provisions entries shall be made by the Officer-in-charge of the Police Station personally or under his supervision by a subordinate.

17. After making the entries in the aforesaid Register it shall be the duty of the Officer-in-charge of the Police Station to produce it at the time of inspection before the Superintendent of Police who will sign the entries after ascertaining and checking, if these have been made from information received through proper sources such as report from Police Station or Judicial Department etc. The officer making the entry shall keep the papers (according to which entries were made in the Register) with due care and in such manner that in case of inspection and checking corresponding papers may easily be traced out.

18. Entries in the Register shall not be disclosed at all to persons whose names have been entered in the said Register or to persons to whom such disclosure is not necessary as part of legitimate duty.

19. The Register will not be open to inspection merely as a record to help in the preparation of a challan or as a record of previous conviction. A person entered in the Register shall not be subjected to surveillance so long as his name is not entered in Register No. 10 according to aforesaid Rules. Any employee of the Police Department who keeps a watch on a person whose name is not entered as a matter of fact, in Register No. 10, shall be suspended.

20. The Superintendent of Police, from time to time, will make necessary correction by removing the names of persons who died or gave up their residence in that Ilaqa.

[*Translated from original in Urdu published in Government Gazette dated 17th Phagan 1972.*]

JUDICIAL DEPARTMENT.

NOTIFICATION NO. 124.

His Highness the Maharaja Sahib Bahadur has been pleased to order (*vide* Chief Minister's letter No. 7356/F-269-09, dated 10th February 1916) that in future appeals against the orders by which names of bad characters are entered in Police Register No. 10 will be heard by the Governors instead of Sessions Judges and in this respect sanction of the Resident has also been received (*vide* letter No. 7112/269-F-09, dated

31st January 1916). Accordingly Resolution No. 1 dated 17th April 1897 will be considered as amended.

This Notification is published in the Gazette for general information.

[Translated from orginal in Urdu published in Judicial Circular Vol. I Page 110.]

LAW OF INHERITANCE PERTAINING TO APOSTATE.

CIRCULAR NO. 107.

[Sanctioned under Resolution No. 6 dated 31st December 1892 and entered in the Proceedings of the State Council.]

READ a report of the Wazir Wazarat Anantnag to the effect that a Pandit resident of Pariwan has along with his wife and children embraced Islam and his mother has applied that her son the new convert should be turned out of her house as under the orders of His Highness the Maharaja Bahadur any person abjuring the religion of his fore-fathers is deprived of succeeding to the property of his father.

RESOLVED by the Council that action may be taken according to law and ancient usage.

This resolution is published in the form of a circular for the information of the public.

(Sd.) RAI BAHADUR PT. BHAG RAM,

Judical Member & Secretary State Council.

THE JUDICIAL OATHS RULES, 1950.

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[*Translated from original in Urdu published in Government Gazette dated 1st Chet 1950.*

THE JUDICIAL OATHS RULES, 1950.

CIRCULAR NO. 34.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Resolution No. 28 contained in the Council Proceedings dated the 13th January 1894.*]

WHEREAS it is expedient to frame rules relating to Judicial Oaths, affirmations and declarations, it is hereby commanded as follows:—

I.—PRELIMINARY.

1. These rules shall come into force from the date of the sanction of the Council.

2. Nothing herein contained shall apply to the proceedings before Courts martial.

II.—AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS.

3. All Courts and persons having by law or consent of parties, authority to receive evidence, are authorised to administer by themselves or by an officer empowered by them

in this behalf oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred on them respectively by law.

III.—PERSONS BY WHOM OATHS AND AFFIRMATIONS MUST BE MADE.

4. Oaths or affirmations shall be made by the following persons:—

(a) All witnesses, that is to say all persons who may lawfully be examined or give or be required to give, evidence by or before any Court or person having, by law or consent of parties, authority to examine such persons or to receive evidence;

(b) interpreters of questions put to, and evidence given by witnesses and

(c) jurors.

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, oath or affirmation to the accused person, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

NOTE—The evidence of a witness below the age of 10, if expediently taken without an oath of affirmation, is admissible.

[1]**5.** Where the witness, interpreter or juror is a Hindu or Mohammedan, or has an objection to making an oath, he shall, instead of making an oath, make an affirmation. In every other case, the witness, interpreter or juror, shall make an oath.

IV—FORMS OF OATHS AND AFFIRMATIONS.

6. All oaths and affirmations made under Rule 4 shall be administered according to the following forms, but the Court may, if it thinks fit, place, at the time of administering oath, the holy book which he considers binding on him in the hands of the witness or the interpreter, and tender an oath according to the forms given below:—

Civil.

Oath.

Whatever evidence I give in this case and before the Court shall be true. I shall state nothing but truth. So help me God.

[1]Rule 5 Substituted by Regulation IV of 1977, Schedule I published in Government Gazetted dated 16th Oct 1977.

Affirmation. I do solemnly affirm that the evidence I shall give in this case before the Court, shall be the truth, the whole truth and nothing but truth. So help me God.

Oath for the Translator. I shall translate correctly and accurately whatever statement is made by the witness before the Court. So help me God.

Affirmation. I do solemnly affirm that I shall translate correctly and accurately whatever statement is made by witness before the Court.

Criminal.

For the witness in cases triable by the Jurors.

Oath. The evidence I shall give before the Court and the jurymen relating to matters to be decided between the Government Servants and the prisoners present in the Court, shall be the truth and nothing but the truth. So help me God.

Affirmation. I do solemnly affirm that the evidence I shall give before the Court and the jurymen relating to the matters to be decided between the Government Servants and prisoner present in the Court, shall be the truth, the whole truth and nothing but the truth.

In other criminal cases.

Oath The evidence I shall give in this case shall be the truth, the whole truth and nothing but the truth. So help me God.

Affirmative. I do solemnly affirm that the evidence I shall give in the Court, shall be the truth, the whole truth and nothing but the truth.

Oath. I shall translate correctly and truly whatever is stated by the witness as between the Government Servants and the prisoner present in the Court.

For the Jurymen.

I take oath. I shall judge truly and give true opinion and verdict in the case according to the evidence before me.

I solemnly affirm in the presence of Almighty God, that I will judge truly between the Government Servants and prisoner in the Court and will give a true verdict according to the evidence.

Affirmation

7. If any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by persons of the race or persuation to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, not withstanding anything hereinbefore contained in this Circular, tender such oath or affirmation to him.

8. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in Rule 7, if such oath or affirmation is made by the other party to or by any witness in such proceeding, the court may, if it thinks fit, ask such party or witness or cause him to be asked, whether or not he will make the oath or affirmation.

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

9. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a Commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed, and return it to the Court.

10. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

11. If the party or witness refuses to make the oath or solemn affirmation referred to in Rule 7, he shall be punished with a fine, but the Court shall record, as part of the proceeding, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

V.—MISCELLANEOUS.

12. No omission to take any oath or make any affirmation, no substitution of any one or any other of them, and no irregularity whatever, in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such

omission, substitution or irregularity took place or shall affect the obligation of a witness to state the truth.

13. Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject.

14. [1]Ranbir Dand Bidhi Section 137, Sub-section (1) shall be construed as if, after the word "oath" the words "or affirmation" were inserted.

15. Subject to the provisions of Rule 4, every person appointed to any office shall, before entering on the execution of the duties of his office, be required to make an oath, or to make or subscribe any affirmation or declaration whatever.

[*Translated from original in Urdu published in Government Gazette dated 4th Assuj 1950.*]

PROHIBITION OF HYPOTHECATION OF A HUMAN BEING IN LIEU OF A DEBT.

ISHTIHAR NO. 112.

(*State Council Resolution No. 34, dated 16th August 1893.*)

It has been noticed that in some parts of the Jammu Province practice is prevalent that a human being is hypothecated in lieu of a debt. Whereas it is essential to stop absolutely for future this practice against public policy His Highness the Maharaja Sahib has been pleased to order (*vide* No. 62/2655 dated 19th Magh, 1949) that whoever in future keeps a human being in hypothecation for securing the payment of his debt will be liable to punishment under [2]Section 143 Ranbir Dand Bidhi, (disobedience to order duly promulgated). Such contract of hypothecation will be considered as void and creditor will not be entitled to realize debt through a Law Court.

Contracts entered into before the promulgation of this Ishtihar will be treated as cancelled so far as condition of hypothecation of a human being is concerned. There will however be no restriction as to institution of a suit for recovery of money advanced.

[1]Section 178 Ranbir Penal Code.
[2]Section 188 Ranbir Penal Code.

[*Translated from original in Urdu published in Judicial Circulars Vol. I. Page 361.*]

PROHIBITION OF REMOVAL OF BOVINE ANIMALS BEYOND STATE TERRITORIES.

[1]NOTIFICATION NO. 119.

8th Maghar 1950.

According to the Irshad of late Shri Maharaja Sahib Bahadur of revered memory dated 18th Maghar, 1939 (attached with the report of the High Court) taking of bovine animals beyond the State territories is prohibited. In a case a reference has been made to His Highness the Maharaja Sahib Bahdur praying elucidation on the point if it is an offence or not to take bovine animals beyond the State territories by the residents of the adjoining villages of the British territories for ploughing purposes. His Highness the Maharaja Sahib Bahadur is pleased to order (*vide* order dated 14th Katik, 1950) that the Irshad of His Highness the Maharaja Sahib Bahadur dated 18th Maghar, 1939 is clear and explicit and according to it compliance shall be made. In accordance with the aforesaid Irshad, therefore, this Notification is published for general information that no person shall take bovine animals beyond the State territories for any purpose whatsoever. Any infringement of this Notification which has the force of law will be punished as an offence as laid down in [2]Section 143, Ranbir Dand Bidhi.

[*Translated from original in Urdu published in Judicial Circulars Vol. III. Page 8.*]

ISHTIHAR NO. 218.

(*Sanctioned vide State Council Resolution No. 30, dated 20th March, 1896.*)

In spite of promulgation of Ishtihar prohibiting export of bovine animals to foreign territories, i.e. territories outside the State, many persons have not refrained from such acts and complaints have been made that such offences are still being committed. Therefore, with a view to check the com-

[1]In 1970 System of permits was introduced. See infra,
[2]Section 188 Ranbir Penal Code.

mission of such offences, it is hereby notified that an informant who will get the accused arrested along with bovine animals while taking them outside the State boundries will get a reward out of the fine imposed upon the accused for such an offence in case such information is proved to be true. It is incumbent upon the Court to grant reward out of the fine inflicted in such cases to persons who arrest or get arrested the accused along with the animals while the latter are being taken outside the State boundaries.

4TH JETH, 1953.

RULES RELATING TO EXPORTATION OF BOVINE ANIMALS, 1970.

Certificate of Import.

1. All bovine animals imported temporarily into the territories of His Highness the Maharaja Bahadur except those laden with goods or yoked to conveyances or otherwise for trade purposes shall be taken direct to the nearest frontier Customs Post and a certificate of import in form A obtained from the official in charge of that Post.

Re-exportation.

2. On the re-exportation of such animals the certificate of import obtained according to rule 1 above shall be handed over at the post of export and the re-exportation shall thereupon be allowed provided that the number tallies with the number imported except as provided in rule 3 below and the export takes place within three months of the date of import. Provided further that the export of such calves also shall be allowed as may be proved to have been born of the cows within the State after their importation.

Re exportation piecemeal

3. If all the bovine animals entered in a certificate of import are not re-exported at one and the same time and some are left for being re-exported subsequently, the Mahaldar at the post of re-export shall note this fact in the remarks column of the certificate of import and shall then return it to the owner or carrier for being produced with the remaining number, when it is exported and the re-exportation shall be allowed according to the provisions of rule 2 above.

Fresh exportation Bond.

4. When any bovine animal not imported in the State during the preceding 3 months and accompanied by a certificate of import is intended to be exported temporarily for trade, agricultural or grazing purposes the owner or carrier export-

ing it shall file a declaration in the form marked B, duly attested and verified by the Lambardar or the Patwari of the village of export and shall thereupon be allowed to export.

NOTE.—Printed forms of declaration will be supplied free by any frontier Customs post on application. *Bona fide* owners of bovine animals when transferring their residence shall be allowed to take their animals along with them as well as those given as gifts on occasions of marriage.

Register of fresh exportation.

5. A register of all bovine animals temporarily exported on furnishing a declaration according to rule 4 shall be maintained at the post of export in Form C, and the signature or thumb mark of the exporter obtained on both export and import in the columns provided for the purpose. The exporter should be given a duplicate copy of this declaration signed by the Mahaldar of the post. Marks of identification of animals should be noted in the registers of imports and exports as well as in the declaration for export.

Re-importation by other routes.

6. If the animals are not imported by the same route by which they were exported the duplicate copy of the declaration granted at the post of exportation shall be produced and the Mahaldar concerned should endorse it with an acknowledgment of re-importation and forward the same immediately to the Mahaldar of the post of export and the latter shall note the fact in remarks column of the register.

Frequent exports and imports.

7. If any zamindar or other person has to take out his animals very frequently for trade, agricultural or grazing purposes to the adjoining British territory he shall furnish a duly attested declaration in form D, to the nearest Customs post and he shall thereupon be granted a permanent pass in Form E.

NOTE.—Printed forms of declaration will be supplied free on demand.

An annual register in Form F, shall also be regularly maintained at the post of issue of the permanent pass.

Additions and deficiencies.

8. The permanent pass shall be renewed each year in the month of Baisakh and any additions or alterations that are made during the course of the year and any deficiencies that are occasioned by natural death, etc. shall immediately be reported to the Mahaladar, with sufficient proofs to corroborate good faith in the case of deficiencies and the Mahaldar shall, provided that he has no reason to doubt the report, note the necessary changes in the pass and the Register.

9, All certificates and passes granted under these rules and the animals for which they are given shall be produced for check and verification at any time on demand by any officer of the—

Check and verification

(a) Customs and Excise Department not below the rank of an Assistant Inspector,
(b) Revenue Department not below the rank of Naib-Tehsildar.

Offences and punishments.

10. Whoever,

(a) exports animals except under a certificate of import or a pass or without furnishing a duly attested declaration,
(b) furnishes or attests a false declaration,
(c) does not re-import animals within the prescribed period,
(d) cannot satisfactorily account for any bovine animals which he is known to have possessed,
(e) refuses to produce passes and animals for inspection, or
(f) otherwise commits an infraction of these rules or the certificates and passes issued thereunder or of any other rules for the time being in force in regard to the exportation of bovine animals,
(g) abets in the commission of any offence or infraction,

he shall be liable to punishment under [1]Section 143 of Ranbir Dand Bidhi.

Report of offences

11. The Mahaldar of the post of export shall send immediate report to the Inspector of Customs and Excise if any bovine animal is not imported within the promised period which shall in no case exceed 3 months.

A. CERTIFICATE OF IMPORT OF BOVINE ANIMALS.

Month and date.
Name and address of carrier or owner.

Details of Animals:—

Cows.

Oxen.

[1]Section 188 Ranbir penal Code.

DEPARTMENT OF LAW
LIBRARY
UNIVERSITY OF KASHMIR
NO 2081 DATE 14/2/2008

Calves.

Total.

Purpose for which imported.

Remarks.

Signature of Mahaldar of the post of Import with the name of post.

Date of re-exportation.

Remarks.

Signature of Mahaldar of the post of Export with the name of post.

B. DECLARATION OF EXPORTATION.

I.....son of.....resident of....Tehsil .....hereby declare that the bovine animals detailed below are being exported temporarily for the purpose of .....and shall all of them without any deficiency whatever be re-imported within.....months and.....days failing which I shall be answerable and liable to punishment under the Customs Regulation of 1958 or any other law for the time being in force.

Details:—

Cows.

Oxen.

Calves.

Total.

Signature.

Date.

I attest the above.

Lambardar
Patwari.

Signature.

Date.

C. REGISTER OF TEMPORARY EXPORTS.

Serial No,

Month and date.

Name and address of exporter.

Details of animals exported:—

Cows.

Oxen.

Calves.

Total.

Purpose of exportation.

Period within which re-importation is promised.

Signature of Exporter.

DATE OF RE-IMPORTATION.

Signature of Importer.

Remarks.

D. DECLARATION OF FREQUENT EXPORTATION AND IMPORTATION.

I————————son of————————resident of————————Tehsil————————hereby state that the Bovine animals detailed below will be taken out frequently to the adjoining British territory for the purpose of———— and therefore declare that I shall alsways conform to and follow the rules and orders in this behalf failing which I shall be liable to punishment under the Customs Regulation of 1958 or any other law for the time being in force.

Details:—

Cows.

Marks of identification.

Oxen.

Marks of identification.

Calves.

Marks of identification.

Total.

Signature.

Date.

I attest the above.

Lambardar

Patwari.

Date.

E. PERMANENT PASS.

No. of Register.

Month and date.

Name and address of grantee.

Purpose of frequent exportation and importation.

Details:—

Cows.

Marks of identification.

Oxen.

Marks of identification.

Calves.

Marks of identification.

Total.

Changes during the year.

Remarks.

Signature of Mahaldar.

In duplicate——one for grantee and the 2nd for office of issue.

F. REGISTER OF FREQUENT IMPORTATION AND EXPORTATION FOR THE YEAR 19 .

Serial No.

Month and date.

Name and address of grantee.

Purpose.

Details:—

Cows.

Marks of identification.

Oxen.

Marks of identification.

Calves.

Marks of identification.

Total.

Changes during the year.

Month and date.

Nature of change.

Cows.

Marks of identification.

Oxen.

Marks of identification.

Calves

Marks of identification.

Remarks.

NOTE :—A full page shall be allotted to each number.

[*Translated from original in Urdu published in Government Gazette dated 15th Chet 1950.*]

CIRCULAR NO. 136.

27th January 1894.

(*Sanctioned under State Council Resolution No. 25, dated 27th January, 1894*).

On a reference by the Saddar Court Jammu to the effect that when a tenant after locking the house goes away without any notice to the owner, and the latter applies for the house being unlocked or for its possession, in which Court such an application will lie, held by the State Council (*vide* Resolution No. 35) that such an application shall lie in a Judicial Court and the Court to which such an application is presented is empowered to give possession (of the house) to the owner and after preparing the list of articles according to rules shall keep them in trust till the return of the tenant. It is therefore proper that all subordinate courts should hear such applications and pass proper orders with respect to articles found within the house and give possession of the house to the owner in conformity with the provisions of this circular and circular No. 16 dated 15th June 1889.

*NOTE.—The court referred to in this circular shall mean the court in which the suit for possession of the property in question would lie.

* Note was added *vide* Regulation IV of 1977 published in Government Gazette dated 16th Chet 1977.

[*Published in Urdu in Government Gazette dated 29th Jeth 1952.*]

POST OFFICE AND SAVINGS BANK ACTS APPLICABLE

NOTIFICATION, 1952.

READ the Resident's letter No. 156, dated the 16th March, 1895, regarding the enforcement of the India Post Office Act of 1866 and the Savings Bank Act of 1873.

(1) Either of the two proposals embodied in paragraph 2 of the Director General's letter may be accepted. On account of the enforcement of the enactments (referred to above) and of the rules made thereunder, either an Act or an Ain on their lines may be introduced in the State, or the courts of the State may be directed that in cases relating to the Post Offices, they should follow the said Act and the rules made thereunder.

(2) With regard to the jurisdiction of the courts in cases relating to the Post Offices, the Resident is of opinion that general rules contained in paragraph 4, clauses (a) and (b) of Resident Colonel Prideaux's letter No. 1098, dated the 27th April 1891, should be deemed to be applicable, that is the cases of the European and American subjects should be tried by the Resident and the cases of other persons who are the subjects of the State or native Indian subjects should be tried in the courts of the State: Provided that those native Indian subjects whom punishment is awarded under the Post Offices Act or Savings Bank Act, by the Courts of the State, should have a right to make an application to the Resident.

The Council under Resolution No. 5, dated the 30th March, 1895, orders as under:—

The Post Office Act and the Savings Bank Act may be deemed to be applicable to the State. All cases tried under these Acts may be tried subject to the conditions laid down in the [1]letter of the Resident, Colonel Prideaux. The Council notifies for the information of the public whether inhabitants of the towns or of the villages within the Jammu and Kashmir State and Jagirs of Poonch, Ramnagar and Bhadarwah, that the Imperial Post Offices shall have an exclusive and absolute authority of transmitting and distributing postal letters and cards.

[1]Arrangement indicated in Para 4 of Colonel Prideaux's letter were Superceeded *vide* Letter No. D 3,256/30, dated 6th June, 1930 from Lieutenant Colonel G. O. Oglivie C. I. E. Resident in Kashmir to the Foreign and Political Minister, Jammu and Kashmir Government, Srinagar published in Government Gazette dated 17th Magh 1987. [Editor]

[*Translated from original in Urdu published in Government Gazette dated 15th Maghar 1965.*]

NOTFICATION NO. 23.

WHEREAS by command of His Highness (*vide* Chief Minister's letter No. 6765, dated 30th October, 1908) the revised Post Office Act, 1898 enforced in British India, has been ordered to be enforced in the State territories, it is hereby published for general information that the Post Office Act, 1898 shall be considered to be enforced in the State from the date of the letter of the Chief Minister subject to such conditions and restrictions as were considered necessary when the Act of 1866 was enforced *vide* Notification [1]No. 2040, dated 25th July 1895. This Notification shall be considered as amended to this extent that instead of Act of 1866, the Post Office Act, 1898 is enforced.

DATED, 5TH MAGHAR, 1965.

(Sd.) PIRZADA MAULVI MOHD. HUSSAIN KHAN,
JUDGE HIGH COURT,
Jammu and Kashmir.

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THE GOVERNMENT SAVINGS BANKS ACT, 1873.

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THE GOVERNMENT SAVINGS BANKS ACT, 1873.
Act No. V of 1873[1].

[*28th January*, 1873.]

AN ACT TO AMEND THE LAW RELATING TO GOVERNMENT SAVINGS BANKS.

[As modified up to the 1st September, 1928.]

WHEREAS it is expedient to amend the law relating to the payment of deposits in Government Savings Banks; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

Short title. 1. This Act may be called the Government Savings Banks Act, 1873.

[1]For St tement of Objects and Reasons to the Bill, which was based upon the Trustee Savings Banks Act, 1863 (26 & 27 Vict., c. 87), s. 30, *see* G zette of Indi , 1872, Pt. V, p. 575; for Proceedings in Council, *see ibid*, 1872, supplement, pp. 727, 743; *ibid*, 1873, Supplement, pp. 150 and 221.

Act V of 1873 has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), s. 3, as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (III of 1899) [B. & O, Code, Vol. I] and in the Arakan Hill District by the Arakan Hill District Laws Regulation, 1916 (I of 1916), s. 2 [Burma Code, Vol. I].

It has been declared, by notification under s. 3 (*a*) of the Scheduled District Act 1874 (XIV of 1874), to be in force in the following Scheduled Districts, namely.— the Districts of Hazaribagh, Lohardaga [now called the Ranchi District, *see* Calcutta Gazette, 1899, Pt. 1. p. 44] and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singbhum [Gazette of India, 1881, Pt 1, p. 504]. The District of Lohardaga included at this time the District of Palamau, separated in 1894.

It has been declared to be in force in Upper Burma generally (except the Shan States), by the Burma Laws Act, 1898 (XIII of 1898), s. 4 (*1*) and Sch. I, Burma Code, Vol. I.

Local extent,

It extends to the whole of British India.

[*Commencement.*] *Rep. by the Repealing Act*, 1874 (*XVI of* 1874).

2. [*Repeal of Act XXVI of* 1855.] *Rep. by the Repealing Act*, 1873 (*XII of* 1873).

Interpretation-clause.

3. In this Act—

"depositor" means a person by whom, or on whose behalf, money has been heretofore, or shall be hereafter, deposited in a Government Savings Bank; and "deposit" means money so deposited:

[1]["Secretary" means, in the case of a Post Office Savings Bank, the Post-master-General appointed for the area in which the Savings Bank is situate.]

[2]["Minor" means a person who is not deemed to have attained his majority under the Indian Majority Act, 1875.]

DEPOSITS BELONGING TO THE ESTATES OF DECEASED PERSONS.

[3][4. If a depositor dies and probate of his will or letters of administration of his estate or a certificate granted under the Succession Certificate Act, 1889, is not within three months of the death of the depositor produced to the Secretary of the Government Savings Bank in which the deposit is, then— VII of 1889.

Paymet on death of depositor.

(*a*) if the deposit does not exceed three thousand rupees, the Secretary may pay the same to any person appearing to him to be entitled to receive it or to administer the estate of the deceased, or

(*b*) if the deposit does not exceed one hundred rupees, any officer employed in the management of a Government Savings Bank, who is empowered in this behalf by a general or special order of the Governor General in Council, may, subject to any general or special orders of the Secretary in this behalf, pay the deposit to any person appearing to him to be entitled to receive it or to administer the estate.]

5. Such payment shall be a full discharge from all further liability in respect of the money so paid:

Payment to be a discharge.

But nothing herein contained precludes any executor or administrator, or other representative of the deceased, from recovering from the person receiving the same the amount remaining in his hands after deducting the amount of all debts or other demands lawfully paid or discharged by him in due course of administration.

Saving of right of executor.

And any creditor or claimant against the estate of the deceased may recover his debt or claim out of the money paid under this Act, or* * *[4] Act No. XXVI of 1855,[5] to any person, and remaining in his hands unadministered, in the same manner and to the same extent as if the latter had obtained letters of administration of the estate of the deceased.

Saving of right of creditor.

[1]This definition was substituted by s. 2 of the Government Savings Banks (Amendment) Act, 1923 (XVI of 1923).

[2]This definition was substituted by s. 2 and Schedule of the Amending Act, 1916 (XIII of 1916).

[3]S. 4 was substituted by s. 3 of the Government Savings Banks (Amendment) Act, 1923 (XVI of 1923).

[4]The words "the said" were repealed by the Repealing and Amending Act, 1891 (XII of 1891).

[5]Act XXVI of 1855 was repealed by s. 2 of this Act.

6. The Secretary of any such Bank [1][or any officer empowered under section 4] may take such security as he thinks necessary from any person to whom he pays any money under section 4 for the due administration of the money so paid, and he may assign the said security to any person interested in such administration.

Security for due administration.

7. For the purpose of ascertaining the right of the person claiming to be entitled as aforesaid, the Secretary of any such Bank [1][or any officer empowered under section 4] may take evidence on oath or affirmation according to the law for the time being relating to oaths and affirmations.

Power to administer oath.

Any person who, upon such oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of an offence under section 193 of the Indian Penal Code.[2]

Penalty for false statements.
XLV of 1860.

8. Where the amount of the deposit belonging to the estate of a deceased depositor does not exceed [3][three thousand rupees], such amount shall be excluded in computing the fee chargeable, under the Court-fees Act, 1870,[4] on the probate, or letters of administration, or certificate (if any), granted in respect of his property:[5]

Deposit when excluded in computing court-fees.
VII of 1870.

Provided that the person claiming such probate or letters or certificate shall exhibit to the Court authorised to grant the same a certificate of the amount of the deposit in any Government Savings Bank belonging to the estate of the deceased. Such certificate shall be signed by the Secretary of such Bank, and the Court shall receive it as evidence of the said amount.

9. Nothing hereinbefore contained applies to money belonging to the estate of any European officer, non-commissioned officer or soldier dying in Her Majesty's service in India, or of any European who, at the time of his death, was a deserter from the said service.

Act not to apply to deposits belonging to estates of European soldiers or deserters.

DEPOSITS BELONGING TO MINORS.

10. Any deposit made by or on behalf of, any minor may be paid to him personally if he made the deposit, or to his guardian for his use if the deposit was made by any person other than the minor, together with the interest accrued thereon.

Payment of deposits to minor or guardian.

The receipt of any minor or guardian for money paid to him under this section shall be a sufficient discharge therefor.

11. All payments of deposits heretofore made to minors or their guardians by any Secretary of a Government Savings Bank shall be deemed to have been made in accordance with law.

Legalization of like payments heretofore made.

DEPOSITS BELONGING TO LUNATICS.

Payment of deposits belonging to lunatics.

12. If any depositor becomes insane or otherwise incapable of managing his affairs,

[1]These words were inserted by s. 4 of the Government Savings Banks (Amendment) Act, 1923 (XVI of 1923).

[2]For Act XLV of 1860, *see* the revised edition as modified up to 1st February, 1922.

[3]These words were substituted for the words "one thousand rupees" by s. 2 of the Government Saving Banks (Amendment) Act, 1917 (XVII of 1917).

[4]For Act VII of 1870, *see* the revised edition as modified up to 1st October, 1928.

[5]*Cf.* the Savings Banks Act, 1828 (9 Geo. IV, c. 92), s. 10 now repealed by the Savings Banks Act, 1863 (26 and 27 Vict., c. 87).

and if such insanity or incapacity is proved to the satisfaction of the Secretary of the Bank in which his deposit may be,

such Secretary may, from time to time, make payments out of the deposit to any proper person,

and the receipt of such person, for money paid under this section, shall be a sufficient discharge therefor.

Where a committee or manager of the depositor's estate has been duly appointed, nothing in this section authorizes payments to any person other than such committee or manager.

DEPOSITS MADE BY MARRIED WOMEN.

13. Any deposit made by or on behalf of a married woman, or by or on behalf of a woman who afterwards marries, may be paid to her, whether or not the Indian Succession Act, 1865[1] section 4, applies to her marriage; and her receipt for money paid to her under this section shall be a sufficient discharge therefor.

Payment of married woman's deposits.

Rules.

14. All certificates under section 8, and all payments under section 10, section 12 or section 13, shall be respectively granted and made by the Secretary of the Bank, subject to such rules consistent with this Act as the Governor General in Council may from time to time, prescribe.[2]

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[1] *See* now the Indian Succession Act, 1925, (XXXIX of 1925).

[2] For such rules, *see* Gazette of India, 1895, Pt. I. p. 406; *ibid*, 1897, Supplement, p. 158.

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THE INDIAN POST OFFICE ACT, 1898.

ACT No. VI OF 1898[1].

[22*nd March*, 1989.]

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE POST OFFICE IN INDIA.

[AS MODIFIED UP TO THE 1ST JULY, 1922.]

WHEREAS it is expedient to consolidate and amend the law relating to the Post Office in India; It is hereby enacted as follows—

CHAPTER I.

PRELIMINARY.

Short title, extent, application and commencement.

1. (1) This Act may be called the Indian Post Office Act, 1898.

(2) It extends to the whole of British India, inclusive of [2]* * British Baluchistan, the Santal Pargans and the Pargana of Spiti; and it applies also to—

(*a*) all Native Indian subjects of Her Majesty in any place without and beyond British India;

(*b*) all other British subjects within the territories of any Native Prince or Chief in India; and

(*c*) all servants of the Queen, whether British subjects or not, within the territories of any Native Prince or Chief in India.

(3) It shall come into force on the first day of July, 1898.

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) the expression "Director General" means the Director General of [3][Posts and Telegraphs]:

[1]For Statement of Objcets and Reasons, *see* Gazette of India, 1897, Pt. V, p. 385; for Report of the Select Committee, *see ibid* 1898, Pt. V, p. 211; for Proceedings in Council *see ibid*, 1897, Pt. VI, p. 249; *ibid*, 1898, Pt. VI. pp. 23, 99 and 285 to 289.

The Act has been applied, under s. 3 (2) of the Chin Hills Regulation, 1896 (5 of 1896), to tracts in which ss. 2 and 4 to 41 of the Regulation have been applied, *see* Burma Gazette, 1898, Pt. I. p. 420

It has been declared to be applicable to members of a Hill-tribe in a Hill-tract under s. 8 (2) of the Kachin Hill Tribes Regulation, 1895 (1 of 1895) *see* Burma Gazette, 1898, Pt. I, p. 564.

It has been declared to be in force in the District of Angul, by s. 3 of the Angul Laws Regulation, 1913 (3 of 1913), Bihar and Orissa Code.

It has been declared to be in force in the Chittagong Hill-tracts by the Chittagong Hill-tract Regulation, 1900 (1 of 1900), Bengal Code.

It has been declared to be in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (13 of 1868) Burma Code.

It has been declared to be in force in the Arakan Hill District by s. 2 of the Arakan Hill District Laws Regulation, 1916 (1 of 1916).

As to Rules made under the Post Office Act, which are now in force or are in force from time to time, see the Indian Postal Guide, which is published by the Post Office.

[2]The word "Upper Burma" were repealed by the Burma Laws Act, 1898 (13 of 1898), Burma Code.

[3]These words were substituted for the words "the Post Office of India" by s. 3 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914), General Acts, Vol. VIII.

(*b*) the expression" inland," used in relation to a postal article, means—

(*i*) posted in British India and addressed to any place in British India or to any place for which a Post Office is established by the Governor General in Counil beyond the limits of British India; or

(*ii*) posted at any Post Office established by the Governor General in in Council beyond the limits of British India and addressed to any place for which any such Post Office is established or to any place in British India:

[1][Provided that the expression " inland " shall not apply to any class of postal articles which may be specified in this behalf by the Governor General in Council by notification in the Gazette of India, when posted in or at or addressed to any places or posts offices which may be described in such notification.]

(*c*) the expression " mail bag " includes a bag, box, parcel or any other envelope or covering in which postal articles in course of transmission by post are conveyed, whether it does or does not contain any such article:

(*d*) the expression " mail ship " means a ship employed for carrying mails, pursuant to contract or continuing arrangement, by the Government of India or Her Majesty's Government or the Government of any British possession or foreign country:

(*e*) the expression " officer of the Post Office " includes any person employed in any business of the Post Office or on behalf of the Post Office:

(*f*) the expression " postage " means the duty chargeable for the transmission by post of postal articles:

(*g*) the expression " postage stamp " means any stamp provided by the Governor General in Council for denoting postage or other fees or sums payable in respect of postal articles under this Act, and includes adhesive postage stamps and stamps printed, embossed, impressed or otherwise indicated on any envelope, wrapper, postcard or other article:

(*h*) the expression " post office " includes every house, building, room, carriage or place used for the purposes of the Post Office, and every letter-box provided by the post office for the reception of postal articles:

(*i*) the expression " postal article " includes a letter, postcard, newspaper, book, pattern or sample packet, parcel and every article or thing transmissible by post:

(*j*) the expression " Post Master General " includes a Deputy Post Master General or other officer exercising the powers of a Post Master General: and

(*k*) the expression " the Post Office " means the department [2][established for the purpose of carrying the provisions of this Act into effect and] presided over by the Director General.

3. For the purposes of this Act,—

Meanings of "in course of transmission by post" and "delivery".

(*a*) a postal article shall be deemed to be in course of transmission by post from the time of its being delivered to a Post Office to the time of its being delivered to the addressee or of its being returned to the sender or otherwise disposed of under Chapter VII.

(*b*) the delivery of a postal article of any description to a postman or other person authorised to receive postal articles of that description for the post shall be deemed to be a delivery to a Post Office: and

(*c*) the delivery of a postal article at the house or office of the addressee, or to the addressee or his servant or agent or other person considered to be au-

[1]This proviso was added by s. 2 of the Indian Post Office (Amendment) Act, 1903 (2 of 1903), General Acts, Vol. V.

[2]These words were inserted by s. 3 of the Indian Post Office and Telegraph (Amendment) Act, 1914 (14 of 1914), General Acts, Vol. VIII.

thorised to receive the article according to the usual manner of delivering postal articles to the addressee, shall be deemed to be delivery to the addressee.

CHAPTER II.

PRIVILEGE AND PROTECTION OF THE GOVERNMENT.

Exclusive privilege of conveying letters reserved to the Government.

4. (1) Wherever within British India posts or postal communications are established by the Governor General in Council, the Governor General in Council shall have the exclusive privilege of conveying by post, from one place to another, all letters, except in the following cases, and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, despatching and delivering all letters, except in the following cases, that is to say:—

(*a*) letters sent by a private friend in his way journey or travel, to be delivered by him to the person to whom they are directed, without hire, reward or other profit or advantage for receiving, carrying or delivering them;

(*b*) letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose; and

(*c*) letters solely concerning goods or property sent either by sea or by land to be delivered with the goods or property which the letters concern, without hire, reward or other profit or advantage for receiving, carrying, or delivering them:

Provided that nothing in this section shall authorize any person to make a collection of letters excepted as aforesaid for the purpose of sending them otherwise than by post.

(2) For the purposes of this section and section 5 the expression "letters" includes postcards.

Certain persons expressly forbidden to convey letters.

5. Wherever within British India posts or postal communications are established by the Governor General in Council, the following persons are expressly forbidden to collect, carry, tender or deliver letters, or to receive letters for the purpose of carrying or delivering them, although they obtain no hire, reward or other profit or advantage for so doing, that is to say:—

(*a*) common carriers of passengers or goods, and their servants or agents, except as regards letters solely concerning goods in their carts or carriages; and

(*b*) owners and masters of vessels sailing or passing on any river or canal in British India, or between any ports or places in British India, and their servants or agents, except as regards letters solely concerning goods on board, and except as regards postal articles received for conveyance under Chapter VIII.

Exemption from liability for loss, misdelivery, delay or damage.

6. The Secretary of State for India in Council shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Governor General in Council as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his wilful act or default.

CHAPTER III.

POSTAGE.

Power to fix rates of inland postage.

7. (1) The Governor General in Council may, by notification in the Gazette of India, fix the rates of postage and other sums to be charged in respect of postal articles sent by the inland post under this Act, and may make rules as to the scale of weights, terms and conditions subject to which the rates so fixed shall be charged:

Provided that the highest rate of postage, when prepaid, shall not exceed the rate set forth for each class of postal articles in the first schedule.

(2) Unless and until such notification as aforesaid is issued, the rates set forth in the said schedule shall be the rates chargeable under this Act.

(3) The Governor General in Council may, by notification in the Gazette of India, declare what packets may be sent by the inland post as book, pattern and sample packets within the meaning of this Act.

Power to make rules as to payment of postage and fees in certain cases.

8. The Governor General in Council may, by rule,—

(*a*) require the prepayment of postage on inland postal articles or any class of inland postal articles, and prescribe the manner in which prepayment shall be made;

(*b*) prescribe the postage to be charged on inland postal articles when the postage is not prepaid or is insufficiently prepaid;

(*c*) provide for the redirection of postal articles and the transmission by post of articles so redirected, either free of charge or subject to such further charge as may be specified in the rules; and

(*d*) prescribe the fees to be charged for the " express delivery " of postal articles, in addition to, or instead of, any other postage chargeable thereon under this Act.

Explanation.—" Express delivery " means delivery by a special messenger or conveyance.

Power to make rules as to registered newspapers.

9. (1) The Governor General in Council may make rules providing for the registration of newspapers for transmission by inland post as registered newspapers.

(2) For the purpose of such registration, every publication, consisting wholly or in great part of political or other news, or of articles relating thereto or to other current topics, with or without advertisements, shall be deemed a newspaper, subject to the following conditions, namely:—

(*a*) that it is published in numbers at intervals of not more than thirty-one days; and

(*b*) that it has a *bona fide* list of subscribers.

(3) An extra or supplement to a newspaper bearing the same date as the newspaper and transmitted therewith, shall be deemed to be part of the newspaper:

Provided that no such extra or supplement shall be so deemed unless it consists wholly or in great part of matter like that of the newspaper and has the title and date of publication of the newspaper printed at the top of each page.

Explanation.—Nothing in this section or in the rules thereunder shall be construed to render it conpulsory to send newspapers by the inland post.

Power to declare rates of foreign postage.

10. (1) Where arrangements are in force with the United Kingdom, or with any British possession or foreign country, for the transmission by post of postal articles between British India and the United Kingdom or such possession or country, the Governor General in Council may, in conformity with the provisions of such arrangements, declare what postage rates and other sums shall be charged in respect of such postal articles, and may make rules as to the scale of weight, terms and conditions subject to which the rates so declared shall be charged.

(2) Unless and until such declaration as aforesaid is made, the existing rates and regulations shall continue in force.

Liability for payment of postage.

11. (1) The addressee of a postal article on which postage or any other sum chargeable under this Act is due, shall be bound to pay the postage or sum so chargeable on his accepting delivery

of the postal article, unless he forthwith returns it unopened:

Provided that, if any such postal article appears to the satisfaction of the Post Master General to have been maliciously sent for the purpose of annoying the adddressee, he may remit the postage.

(2) If any postal article on which postage or any other sum chargeable under this Act is due, is refused or returned as as aforesaid, or if the addressee is dead or cannot be found, then the sender shall be bound to pay the postage or sum due thereon under this Act.

Recovery of postage and other sums due in respect of postal articles.

12. If any person refuses to pay any postage or other sum due from him under this Act in respect of any postal article, the sum so due may, on application made by an officer of the Post Office authorise in this behalf by the written order of the Post Master General, be recovered for the use of the Post Office from the person so refusing, as if it were a fine imposed under this Act, by any Magistrate having jurisdiction where that person may for the time being be resident; and the Post Master General may further direct that any other postal article, not being on Her Majesty's service, addressed to that person shall be withheld from him until the sum so due is paid or recovered as aforesaid.

Customs duty paid by the Post Office to be recoverable as postage

13. When a postal article, on which any duty of customs is payable, has been received by post from any place beyond the limits of British India, and the duty has been paid by the postal authorities at any customs-port or elsewhere, the amount of the duty shall be recoverable as if it were postage due under this Act.

Post Office marks *prima facie* evidence of certain facts denoted.

14. In every proceeding for the recovery of any postage or other sum alleged to be due under this Act in respect of a postal article,—

(*a*) the production of the postal article, having thereon the official mark of the Post Office denoting that the article has been refused, or that the addressee is dead or cannot be found, shall be *prima facie* evidence of the fact so denoted, and

(*b*) the person from whom the postal article purports to have come, shall, until the contrary is proved, be deemed to be the sender thereof.

Official mark to be evidence of amount of postage.

15. The official mark on a postal article denoting that any postage or other sum is due in respect thereof to the Post Office of British India or to the Post Office of the United Kingdom or of any British possession or foreign country, shall be *prima facie* evidence that the sum denoted as aforesaid is so due.

CHAPTER IV.

POSTAGE STAMPS.

Provision of postage stamps and power to make rules as to them.

16. (1) The Governor General in Council shall cause postage stamps to be provided of such kinds and denoting such values as he may think necessary for the purposes of this Act.

(2) The Governor General in Council may make rules as to the supply, sale and use of postage stamps.

(3) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) fix the price at which postage stamps shall be sold;

(*b*) declare the classes of postal articles in respect of which postage stamps shall be used for the payment of postage or other sums chargeable under this Act,

(*c*) prescribe the conditions with regard to perforation, defacement and all other matters subject to which postage stamps may be accepted or refused in payment of postage or other sums;

(*d*) regulate the custody, supply and sale of postage stamps;

(*e*) declare the persons by whom and the terms and conditions subject to which postage stamps may be sold, and

(*f*) prescribe the duties and remuneration of persons selling postage stamps.

Postage stamps to be deemed to be stamps for the purpose of revenue.

17. (1) Postage stamps provided under section 16 shall be deemed to be stamps issued by Government for the purpose of revenue within the meaning of the Indian Penal Code, and, subject to the other provisions of this Act, shall be used for the prepayment of postage or other sums chargeable under this Act in respect of postal articles, except where the Governor General in Council directs that prepayment shall be made in some other way. XLV of

[1][(2) Where the Governor General in Council has directed that prepayment of postage, or other sums chargeable under this Act in respect of postal articles may be made by prepaying the value denoted by the impressions of stamping machines issued under his authority, the impression of any such machines shall likewise be deemed to be a stamp issued by Government for the purpose of revenue, within the meaning of the Indian Penal Code.]

CHAPTER V.

CONDITIONS OF TRANSMISSION OF POSTAL ARTICLES.

Redelivery to sender of postal article in course of transmission by post.

18. (1) The Governor General in Council may, by rule, provide for the redelivery to the sender, without reference to the consent of the addressee and subject to such conditions (if any) as may be deemed fit, of any postal article in course of transmission by post.

(2) Save as provided by any rules that may be made under sub-section (1), the sender shall not be entitled to recall a postal article in course of transmission by post.

Transmission by post of anything injurious prohibited.

19. (1) Except as otherwise provided by rule and subject to such conditions as may be prescribed thereby, no person shall send by post any explosive, dangerous, filthy, noxious or deleterious substance, any sharp instrument not properly protected, or any living creature which is either noxious or likely to injure postal articles in course of transmission by post or any officer of the Post Office.

(2) No person shall send by post any article or thing which is likely to injure postal articles in course of transmission by post or any officer of the Post Office.

Transmission by post of anything indecent, etc., prohibited.

20. No person shall send by post—

(*a*) any indecent or obscene printing, painting, photograph, lithograph, engraving, book or card, or any other indecent or obscene article, or

(*b*) any postal article having thereon, or on the cover thereof, any words, marks or designs of an indecent, obscene, seditious, scurrilous, threatening or grossly offensive character.

[1]Section 17 (2) added *vide* Act 16 of 1924.

21. [1][(1) The Governor General in Council may make rules as to the transmission of articles by post.]

Power to make rules as to transmission by post of postal articles.

[1][(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) specify articles which may not be transmitted by post;

(*b*) prescribe conditions on which articles may be transmitted by post;

(*c*) provide for the detention and disposal of articles in course of transmission by post in contravention of rules made under clause (*a*) or clause (*b*);

(*d*) provide for the granting of receipts for, and the granting and obtaining of certificates of, posting and delivery of postal articles and the sums to be paid, in addition to any other postage, for such receipts and certificates; and

(*e*) regulate covers, forms, dimensions, maximum weights, and enclosures, and the use of postal articles, other than letters, for making communications.]

(3) Postal articles shall be posted and delivered at such times and in such manner as the Director General may, by order, from time to time appoint.

22. (1) Where the despatch or delivery from a Post Office of letters would be delayed by the despatch or delivery therefrom at the same time of book, pattern or sample packets and parcels, or any of them, such packets or parcels, or any of them, may, subject to such rules as the Governor General in Council may make in this behalf, be detained in the Post Office so long as may be necessary.

Power to postpone despatch or delivery of certain postal articles.

(2) Where separate parcel posts are established, parcels may be forwarded and conveyed by them, being detained, if necessary, in the Post Office for that purpose.

23. (1) Any postal article sent by post in contravention of any of the provisions of this Act may be detained and either returned to the sender or forwarded to destination, in each case charged with such additional postage (if any) as the Governor General in Council may, by rule, direct.

Power to deal with postal articles posted in contravention of Act.

(2) Any officer in charge of a Post Office or authorized by the Post Master General in this behalf may open or unfasten any newspaper or any book, pattern or sample packet, in course of transmission by post, which he suspects to have been sent by post in contravention of [2][section 20, clause (*a*), or of] section 21 or of any of the provisions of this Act relating to postage.

(3) Notwithstanding anything in sub-section (1)—

(*a*) any postal article sent by post in contravention of the provisions of section 19 may, under the authority of the Post Master General, if necessary, be opened and destroyed; and

[3][(*b*) any postal article sent by post in contravention of the provisions of section 20 may be disposed of in such manner as the Governor General in Council may, by rule, direct.]

[1]These sub-sections were substituted by s. 2 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

[2]These words and figures were inserted by s. 3 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

[3]This clause was substituted by s. 3 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

Power to deal with postl articles containing goods contraband or liable to duty.

24. [1][Except as otherwise provided in this Act, where a postal article suspected to contain any goods of which the import by post or the transmission by post is prohibited by or under any enactment for the time being in force,] or anything liable to duty is received for delivery at a Post Office, the officer in charge of the Post Office shall send a notice in writing to the addressee inviting him to attend, either in person or by agent, within a specified time at the Post Office, and shall in the presence of the addressee or his agent, or if the addressee or his agent fails to attend as aforesaid then in his absence, open and examine the postal article:

Provided, first, that, if the Director General so directs in the case of any Post Office or class of Post Offices, the officer in charge of the Post Office shall call in two respectable persons as witnesses before he opens a postal article in the absence of the addressee or his agent:

Provided, secondly, that in all cases a postal article, after being opened under this section, shall be delivered to the addressee, unless it is required for the purpose of any further proceeding under this or any other law or enactment for the time being in force, and that the opening of the postal article and the circumstances connected therewith shall be immediately reported to the Post Master General:

[2]* * * * *

Power to deliver such articles to Customs authority.

[3][24A. The Governor General in Council may, by general or special order, empower any officer of the Post Office, specified in such order to deliver any postal article, received from beyond the limits of British India and suspected to contain anything liable to duty, to such Customs authority as may be specified in the said order, and such Customs authority shall deal with such article in accordance with the provisions of the Sea Customs Act, 1878, or of any other law for the time being in force.] VIII of 1878.

Power to intercept notified goods during transmission by post.

25. Where a notification has been published under section 19 of the Sea Customs Act, 1878, in respect of any goods of any specified description, [4][or where the import or export into or from British India of goods of any suspected description has been prohibited or restricted by or under any other enactment for the time being in force] any officer of the Post Office empowered in this behalf by the Governor General in Council may search, or cause search to be made, for any such goods in course of transmission by post, and shall deliver [5][all postal articles reasonably believed or found to contain such goods] to such officer as the Governor General in Council may appoint in this behalf, and such goods may be disposed of in such manner as the Governor General in Council may direct. VIII of 1878.

[6][In carrying out any such search, such officer of the Post Office may open or unfasten, or cause to be opened or unfastened, any newspaper or any book, pattern or sample packet in course of transmission by post.]

Power to intercept postal articles for public good.

26. (1) On the occurrence of any public emergency, or in the interest of the public safety or tranquillity, the Governor General in Council or a Local Government, or any officer specially authorized in this behalf by the Governor General in Council, may, by order in writing, direct that any postal article or class or description of postal articles

[1] These words were substituted for the words "Where a postal article, suspected to contain any contraband goods" by s. 4 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912) General Acts, Vol. VII.

[2] The third proviso to s. 24 was omitted by s 2 of the Indian Post Office (Amendment) Act, 1921 (15 of 1921)

[3] This section was inserted by s. 3 of the Indian Post Office (Amendment) Act, 1921 (15 of 1921).

[4] Inserted by Act II of 1930.

[5] These words were substituted for the words "all such goods found" by s. 5 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912).

[6] This paragraph was added by *ibid*.

in course of transmission by post shall be intercepted or detained or [1][shall be disposed of in such manner as the authority issuing the order may direct].

(2) If any doubt arises as to the existence of a public emergency, or as to whether any act done under sub-section (1) was in the interest of the public safety or tranquillity, a certificate signed by a Secretary to the Government of India or to the Local Government shall be conclusive proof on the point.

Power to deal with postal articles from abroad bearing fictitious or previously used stamps.

27. (1) Where a postal article is received by post from any place beyond the limits of British India—

(*a*) bearing a fictitious postage stamps, that is to say, any facsimile or imitation or representation of postage stamp, or

(*b*) purporting to be prepaid with any postage stamp which has been previously used to prepay any other postal article,

the officer in charge of the Post Office at which the postal article is received, shall send a notice to the addressee inviting him to attend, either in person or by agent, within a specified time at the Post Office to receive delivery of the postal article.

(2) If the addressee or his agent attends at the Post Office within the time specified in the notice and consents to make known to the officer in charge of the Post Office the name and address of the sender of the postal article and to redeliver to the officer aforesaid the portion of the postal article which bears the address and the fictitious or previously used postage stamp, or, if the postal article is inseparable from the stamp, the entire postal article, the postal article shall be delivered to the addressee or his agent.

(3) If the addressee or his agent fails to attend at the Post Office within the time specified in the notice, or, having attended within that time, refuses to make known the name and address of the sender or to redeliver the postal article or portion thereof as required by sub-section (2), the postal article shall not be delivered to him, but shall be disposed of in such manner as the Governor General in Council may direct.

Explanation.—For the purposes of this section, the expression "postage stamp" includes any postage stamp for denoting any rate or duty of postage of any part of Her Majesty's dominions or of any Native State or foreign country, [2][and the impression of any stamping machine provided or authorized for the like purpose by or under the authority of the Government of such part, State or country]

Prohibition of transmission by post of certain news-papers.

[3][27A. No newspaper printed and published in British India without conforming to the rules laid down in the Press and Registration of Books Act, 1867[4], shall be transmitted by post.]

Power to det in newsp.per and other articles being transmitted by post.

[3][27B. (1) Any officer of the Post Office authorised by the Post Master General in this behalf may detain any postal article in course of transmission by post which he suspects to contain—

[1]These words were substituted for the words "shall be delivered to the Government or to an officer thereof mentioned in the order, to be disposed of in such manner as the Governor General in Council may direct" by s. 6 of *ibid*.

[2]Words in brackets in Explanation to s. 27 added *vid.* Act 16 of 1924.

[3]This section was inserted by s. 6 and Fourth Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

[4]General Acts, Vol. I.

(*a*) (*i*) any newspaper or book as defined in the Press and Registration of Books Act, 1867[1]; or XXV of 1867

(*ii*) any document;

containing any seditious matter, that is to say, any matter the publication of which is punishable under section 124A of the Indian Penal Code[1]; or XLV of 1860.

(*b*) any newspaper as defined in the Press and Registration of Books Act, 1867[1], edited, printed or published otherwise than in conformity with the rules laid down in that Act; XXV of 1867

and shall deliver any postal article so detained to such officer as the Local Government may appoint in this behalf.

(2) Any officer detaining any postal article under the provisions of sub-section (1) shall forthwith send by post to the addressee of such article notice of the fact of such detention.

(3) The Local Government shall cause the contents of any postal article detained under sub-section (1) to be examined, and, if it appears to the Local Government that the article contained any newspaper, book or other document, of the nature described in clause (*a*) or clause (*b*) of sub-section (1), may pass such orders as to the disposal of the article and its contents as it may deem proper, and, if it does not so appear, shall release the article and its contents, unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any article detained under the provisions of clause (*a*) of sub-section (1) may, within two months from the date of such detention, apply to the Local Government for release of the same, and the Local Government shall consider such application and pass such orders thereon as it may deem to be proper:

Provided also that, if such application is rejected the applicant may, within two months from the date of the order rejecting the application, apply to the High Court for release of the article and its contents on the ground that the article did not contain any newspaper, book or other document containing any seditious matter.

(4) In this section "document" includes also any painting, drawing or photograph, or other visible representation.]

[2][27C. Every application made under the second proviso to sub-section (3) of section 27B shall be heard and determined in the manner provided by sections 99D to 99F of the Code of Criminal Procedure, 1898, by a Special Bench of the High Court constituted in the manner provided by section 99C of that Code.] V of 9188.

Procedure for disposal by High Court of applications for release of newspapers and articles so detained.

[2][27D. No order passed or action taken under section 27B shall be called in question in any Court otherwise than in accordance with the second proviso to sub-section (3) of that section.]

Jurisdiction barred.

CHAPTER VI.

REGISTRATION, INSURANCE AND VALUE-PAYABLE POST.

28. The sender of a postal article may, subject to the other provisions of this Act, have the article registered at the Post Office at which it is posted, and require a receipt therefor; and the Governor General in Council may, by notification in the Gazette of

Registration of postal articles.

[1]General Acts, Vol. I.

[2]These sections were inserted by s. 6 and Fourth Schedule of the Press Law Repeal and Amendment Act, 1922 (14 of 1922).

India, direct that, in addition to any postage chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the registration of postal articles.

Power to make rules as to registration.

29. (1) The Governor General in Council may make rules as to the registration of postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) declare in what cases registration shall be required;

(*b*) prescribe the manner in which the fees for registration shall be paid; and

(*c*) direct that twice the fee for registration shall be levied on the delivery of a postal article required to be registered, on which the fee for registration has not been prepaid.

(3) Postal articles made over to the Post Office for the purpose of being registered, shall be delivered, when registered, at such times and in such manner as the Director General may, by order, from time to time appoint.

Insurance of postal articles.

30. The Governor General in Council may, by notification in the Gazette of India, direct—

(*a*) that any postal article may, subject to the other provisions of this Act, be insured at the Post Office at which it is posted, against the risk of loss or damage in course of transmission by post, and that a receipt therefor shall be granted to the person posting it; and

(*b*) that, in addition to any postage and fees for registration chargeable under this Act, such further fee as may be fixed by the notification shall be paid on account of the insurance of postal articles.

Power to require insurance of postal articles.

31. The Governor General in Council may, by notification in the Gazette of India, declare in what cases insurance shall be required, and direct that any postal article containing anything required to be insured, which has been posted without being insured, shall be returned to the sender or shall be delivered to the addressee, subject to the payment of such special fee as may be fixed by the notification:

Provided that the levy of such special fee as aforesaid shall not impose any liability upon the Secretary of State for India in council in respect of the postal article.

Power to make rules as to insurance.

32. (1) The Governor General in council may make rules as to the insurance of postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) declare what classes of postal articles may be insured under section 30;

(*b*) fix the limit of the amount for which postal articles may be insured; and

(*c*) prescribe the manner in which the fees for insurance shall be paid.

(3) Postal articles made over to the Post Office for the purpose of being insured, shall be delivered, when insured, at such places and times and in such manner as the Director General may, by order, from time to time appoint.

Liability in respect of postal articles insured.

33. Subject to such conditions and restrictions as the Governor General in Council may, by rule, prescribe, the Secretary of State for India in Council shall be liable to pay compensation, not exceeding the amount for which a postal article has been insured,

to the sender thereof for the loss of the postal article or its contents, or for any damage caused to it in course of transmission by post:

Provided that the compensation so payable shall in no case exceed the value of the article lost or the amount of the damage caused.

Transmission by post of value-payable postal articles.

34. The Governor General in Council may, by notification in the Gazette of India, direct that, subject to the other provisions of this Act and to the payment of fees at such rates as may be fixed by the notification, a sum of money specified in writing at the time of posting by the sender of a postal article shall be recoverable on the delivery thereof from the addressee, and that the sum, so recovered, shall be paid to to the sender:

Provided that the Secretary of State for India in Council shall not incur any liability in respect of the sum specified for recovery, unless and until that sum has been received from the addressee.

Explanation.—Postal articles sent in accordance with the provisions of this section may be described as " value-payable " postal articles.

Power to make rules as to value payable postal articles.

35. (1) The Governor General in Council may make rules as to the transmission by post of value-payable postal articles.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) declare what classes of postal articles may be sent as value-payable postal articles;

(*b*) direct that no postal article shall be so sent unless the sender declares that it is sent in execution of a *bona fide* order received;

(*c*) limit the value to be recovered on the delivery of any value-payable postal article[1];

(*d*) prescribe the form of declaration to be made by the senders of value-payable postal articles, and the time and manner of the payment of fees.

[2][(*e*) provide for the retention and repayment to the addressee in cases of fraud of money recovered on the delivery of any value-payable postal article: and

(*f*) prescribe the fees to be charged for inquiries into complaints regarding the delivery of or payment for value-payable postal articles.]

(3) Postal articles shall be made over to the Post Office for the purpose of being sent as " value-payable " and shall be delivered, when so sent, at such times and in such manner as the Director General may, by order, from time to time appoint.

[3][(4) No suit or other legal proceeding shall be instituted against the Secretary of State for India in Council or any officer of the Post Office in respect of anything done, or in good faith purporting to be done, under any rule made under clause (*e*) of sub-section (2).]

Power to give effect to arrangements with other countries.

36. (1) Where arrangements are in force with the United Kingdom, or with any British possession, Native State or foreign country, for the transmission by post of registered, insured or value-payable postal articles between British India and the United Kingdom or such possession, State or country, the Governor General in Council may make rules to give effect to such arrangements.

[1]The word "and" was omitted by s. 7 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

[2]These clauses were added by s. 7 of *ibid*.

[3]This sub-section was added by s. 7 of *ibid*,

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the form of declaration to be made by the senders of such postal articles as aforesaid; and

(*b*) the fees to be charged in respect thereof.

CHAPTER VII.

UNDELIVERED POSTAL ARTICLES.

Power to make rules as to disposal of undelivered postal articles.

37. (1) The Governor General in Council may make rules as to the disposal of postal articles which for any reason cannot be delivered (hereinafter referred to as "undelivered postal articles").

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(*a*) prescribe the period during which undelivered postal articles at a Post Office shall remain in that office; and

(*b*) provide for the publication of lists of undelivered postal articles, or of any class of undelivered postal articles.

(3) Every undelivered postal article, after being detained at a Post Office for the period prescribed by rule under the foregoing provisions of this section, shall be either forwarded, free of further charge, to the Post Office at which it was posted, for return to the sender, or sent to the office of the Post Master General.

Disposal of undelivered postal articles at office of Post Master General

38. (1) Every postal article received at the office of the Post Master General under sub-section (3) of section 37 shall be dealt with as follows:—

(*a*) if practicable, it shall be redirected and forwarded by post to the addressee; or,

(*b*) if it cannot be redirected and forwarded as aforesaid, it shall be opened by some officer, appointed by the Post Master General in this behalf and bound to secrecy, in order to ascertain the name and address of the sender.

(2) If the name and address of the sender are so ascertained, it shall be returned by post to the sender, free of further charge or subject to such further charge as the Governor General in Council may, by rule, direct.

Final disposal of undelivered postal articles.

39. Undelivered postal articles which cannot be disposed of under the foregoing provisions, shall be detained in the office of the Post Master General for such further period (if any), and shall be dealt with in such manner, as the Governor General in Council may, by rule, direct:

Provided that—

(*a*) letters and postcards shall be destroyed;

(*b*) money or saleable property, not being of a perishable nature, found in any undelivered postal article, shall be detained for a period of one year in the office of the Post Master General, and, if on the expiration of that period no person has established his right thereto, shall, if money, be credited to the Post Office, and, if saleable property, be sold, the sale-proceeds being credited to the Post Office.

CHAPTER VIII.

SHIP LETTERS.

Duty of master of ship, departing from any port in British India and not being a mail ship, to convey mail bags.

40. The master of a ship, not being a mail ship, about to depart from any port in British India to any port within, or any port or place beyond, British India, shall receive on board any mail bag tendered to him by any officer of the Post Office for conveyance, granting a receipt therefor in such form as the Governor General in Council may, by rule, prescribe, and shall, without delay, deliver the same at the port or place of destination.

Duty of master of ship arriving at any port in British India in respect of postal articles and mail bags on board.

41. (1) The master of a ship arriving at any port in British India shall, without delay, cause every postal article or mail bag on board which is directed to that port and is within the exclusive privilege conferred on the Governor General in Council by section 4, to be delivered either at the Post Office at that port or to some officer of the Post Office authorized in this behalf by the Post Master General.

(2) If there is on board any postal article or mail bag which is directed to any other place within British India and is within the exclusive privilege aforesaid, the master shall, without delay, report the fact to the officer in charge of the Post Office at the port of arrival and act according to the directions he may receive from such officer, and the receipt of such officer shall discharge him from all further responsibility in respect of the postal article or mail bag.

Allowance of gratuities for conveyance of postal articles by ships other than mail ships.

42. The Governor General in Council may, by notification in the Cazette of India, declare what gratuities shall be allowed to masters of ships, not being mail ships, in respect of postal articles received by them for conveyance on behalf of the Post Office; and the master of a ship, not being mail ship, about to leave any port in British India as aforesaid shall, if he receives on board a mail bag for conveyance, be entit'ed to demand and obtain immediately the amount of the gratuity payable under this section in respect of the mail bag and its contents.

CHAPTER IX.

MONEY ORDERS.

Power to maintain money order system and to make rules as to remittances thereby.

43. (1) The Governor General in Council may provide for the remitting of small sums of money through the Post Office by means of money orders, and may make rules as to such money orders.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the limit of amount for which money orders may be issued;

(*b*) the period during which money orders shall remain current; and

(*c*) the rates of commission or the fees to be charged on money orders or in respect thereof.

Power for remitter to recall money order or alter name of payee.

44. (1) Subject to such conditions as the Governor General in Council may, by rules made under section 43, prescribe in respect of the levy of additional rates of commission or fees or any other matters, a person remitting money through the Post Office by means of a money order may require that the amount of the

order, if not paid to the payee, be repaid to him, or be paid to such person other than the original payee as he may direct.

(2) If neither the payee nor the remitter of a money order can be found, and if within the period of one year from the date of the issue of the order no claim is made by such payee or remitter, the amount of such order shall not be claimable from the Government.

Power to provide for the issue of postal orders.

45. The Governor General in Council may authorize the issue, in such form as may be suitable, of money orders, to be called postal orders or by such other designation as may be deemed appropriate, for certain fixed amounts, and may make rules as to the rates of commission to be charged thereon and the manner in which, and conditions subject to which, they may be issued, paid and cancelled:

Provided that no such order shall be issued for an amount in excess of ten rupees.

Power to give effect to to arrangements with other countries.

46. (1) Where arrangements are in force with the United Kingdom, or with any British possession, Native State or foreign country, for the issue and payment through the Post Office of money orders between British India and the United Kingdom or such possession, State or country, the Governor General in Council may make rules to give effect to such arrangements.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may prescribe—

(*a*) the manner in which, and the conditions subject to which, such orders may be issued and paid in British India; and

(*b*) the rates of commission to be charged thereon.

Recovery of money order paid to the wrong person.

47. If any person, without reasonable excuse, the burden of proving which shall lie on him, neglects or refuses to refund—

(*a*) any amount paid to him in respect of a money order by an officer of the Post Office in excess of what ought to have been paid to him in respect thereof, or

(*b*) the amount of a money order paid by an officer of the Post Office to him instead of to some other person to whom it ought to have been paid,

such amount shall be recoverable by an officer of the Post Office authorized by the Post Master General in this behalf from the person so neglecting or refusing as if it were an arrear of land-revenue due from him.

Exemption from liability in respect of money orders.

48. No suit or other legal proceeding shall be instituted against the Secretary of State for India in Council or any officer of the Post Office in respect of—

(*a*) any thing done under any rules made by the Governor General in Council under this Chapter; or

(*b*) the wrong payment of a money order caused by incorrect or incomplete information given by the remitter as to the name and address of the payee, provided that, as regards incomplete information, there was reasonable justification for accepting the information as a sufficient description for the purpose of identifying the payee; or

(*c*) the payment of any money order being refused or delayed by, or on account of, any accidental neglect, omission or mistake, by, or on the part of, an officer of the Post Office, or for any other cause whatsoever, other than the fraud or wilful act or default of such officer; or

(*d*) any wrong payment of a money order after the expiration of one year year from the date of the issue of the order; [1][or]

[1][(*e*) any wrong payment or delay in payment of a money order beyond the limits of British India by an officer of any Post Office, not being one established by the Governor General in Council.]

CHAPTER X.

PENALTIES AND PROCEDURE.

Offences by Officers of the Post Office.

Penalty for misconduct of person employed to carry or deliver mail bags or postal articles.

49. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post,—

(*a*) is in a state of intoxication while so employed, or

(*b*) is guilty of carelessness or other misconduct, whereby the safety of any such mail bag or postal article as aforesaid is endangered, or

(*c*) loiters or makes delay in the conveyance or delivery of any such mail bag or postal article as aforesaid, or

(*d*) does not use due care and diligence safely to convey or deliver any such mail bag or postal article as aforesaid,

shall be punishable with fine which may extend to fifty rupees.

Penalty for voluntary withdrawal from duty, without permission or notice, of person employed to carry or deliver mail bags or postal articles

50. Whoever, being employed to carry or deliver any mail bag or any postal article in course of transmission by post, voluntarily withdraws from the duties of his office without permission or without having given one month's previous notice in writing, shall be punishable with imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both.

Penalty for making false entry in register kept by person employed to carry or deliver postal articles.

51. Whoever, being employed to carry or deliver any postal article in course of transmission by post and required while so employed to keep any register, makes, or causes or suffers to be made, any false entry in the register with intent to induce the belief that he has visited a place, or delivered a postal article, which he has not visited or delivered, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred rupees or with both.

Penalty for theft, dishonest misappropriation, secretion, destruction, or throwing away of postal articles

52. Whoever, being an officer of the Post Office, commits theft in respect of, or dishonestly misappropriates, or, for any purpose whatsoever, secretes, destroys or throws away, any postal article in course of transmission by post or anything contained therein, shall be punishable with imprisonment for a term which may extend to seven years, and shall also be punishable with fine.

Penalty for opening, detaining or delaying postal articles

53. Whoever, being an officer of the Post Office, contrary to his duty, opens, or causes or suffers to be opened, any postal article in course of transmission by post, or wilfully detains or delays or causes or suffers to be detained or delayed, any such postal article, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

[1]The word "or" and clause (*e*) were added to s. 48 by s. 8 of the Indian Post Office (Amendment) Act, 1912 (3 of 1912), General Acts, Vol. VII.

Provided that nothing in this section shall extend to the opening, detaining or delaying of any postal article under the authority of this Act or in obedience to the order in writing of the Governor General in Council or the direction of a competents Court.

Penalty for fraud in connection with official marks and for receipt of excess postage.

54. Whoever, being an officer of the Post Office,—

(*a*) fraudulently puts any wrong official mark on a postal article, or

(*b*) fraudulently alters, removes or causes to disappear any official mark which is on a postal article, or

(*c*) being entrusted with the delivery of any postal article, knowingly demands or receives any sum of money in respect of the postage thereof which is not chargeable under this Act,

shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for fraudulently preparing, altering, secreting or destroying Post Office documents.

55. Whoever, being an officer of the Post Office entrusted with the preparing or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for fraudulently sending unpaid postal articles.

56. Whoever, being an officer of the Post Office, sends by post, or puts into any mail bag, any postal article upon which postage has not been paid or charged in the manner prescribed by this Act, intending thereby to defraud the Government of the postage on such postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Punishment of offences committed in India outside British India.

57. (1) Whoever, being an officer of the Post Office employed in any place in India beyond the limits of British India in which posts are established by the Governor General in Council, or being appointed to sell postage stamps in any such place, commits therein an offence punishable under this Act, shall be punishable either in the place where the offence was committed by any Court or officer duly empowered by the Governor General in Council to take cognizance of offences committed in that place, or in any part of British India by any Court of competent jurisdiction as if the offence had been committed in that part.

98. (2) The provisions of section 188 of the Code of Criminal Procedure, 1898, shall not apply to any offence referred to in this section.

Other Offences.

Penalty for contravention of section 4.

58. (1) Whoever—

(*a*) conveys, otherwise than by post, a letter within the exclusive privilege conferred on the Governor General in Council by section 4, or

(*b*) performs any service incidental to conveying, otherwise than by post, any letter within the exclusive privilege aforesaid, or

(*c*) sends or tenders or delivers in order to be sent, otherwise than by post, a letter within the exclusive privilege aforesaid, or

(*d*) makes a collection of letters excepted from the exclusive privilege aforesaid for the purpose of sending them otherwise than by post,

shall be punishable with fine which may extend to fifty rupees for every such letter.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for contravention of section 5.

59. (1) Whoever, in contravention of the provisions of section 5, carries, receives, tenders or delivers letters, or collects letters, shall be punishable with fine which may extend to fifty rupees for every such letter.

(2) Whoever, having already been convicted of an offence under this section, is again convicted thereunder, shall, on every such subsequent conviction, be punishable with fine which may extend to five hundred rupees.

Penalty for breach of rules under section 16.

60. Whoever, being appointed to sell postage stamps,—

(*a*) takes from any purchaser for any postage stamp or quantity of postage stamps a price higher than that fixed by any rule made under section 16, sub-section (3), clause (*a*), shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both; or

(*b*) commits a breach of any other rule made under section 16, shall be punishable with fine which may extend to two hundred rupees.

Penalty for contravention of section 19 or 20.

61. (1) Whoever, in contravention of the provisions of section 19 or section 20, sends or tenders or makes over in order to be sent by by post any postal article or anything, shall be punishable with imprisonment for a term which may extend to one year or with fine, or with both.

(2) The detention in the Post Office of any postal article on the ground of its having been sent in contravention of the provisions of section 19 or section 20, shall not exempt the sender from any proceedings which might have been taken if the postal article had been delivered in due course of post.

Penalty for defiling or injuring post office letter boxes.

62. Whoever places in or against any letter-box provided by the Post Office for the reception of postal articles any fire, match or light, any explosive, dangerous, filthy, noxious or deleterious substance, or any fluid, or commits a nuisance in or against any such letter-box or does anything likely to injure any such letter-box or its appurtenances or contents, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

Penalty for affixing without authority, thing to, or painting, tarring or disfiguring, Post Office or Post Office letter-box.

63. Whoever, without due authority, affixes any placard, advertisement, notice, list, document, board or other thing in or on, or paints, tars or in any way disfigures any Post Office or any letter-box provided by the Post Office for the reception of postal articles, shall be punishable with fine which may extend to fifty rupees.

Penalty for making false declaration.

64. Whoever, being required by this Act to make a declaration in respect of any postal article to be sent by post or the contents or value thereof, makes in his declaration any statement which he knows, or has reason to believe, to be false, or does not believe to be true, shall be punishable with fine which may extend to two hundred rupees, and, if the false declaration is made for the purpose of defrauding the Government, with fine which may extend to five hundred rupees.

Penalty for master of ship failing to comply with the provisions of section 40 or 41.

65. Whoever, being the master of a ship,—

(*a*) fails to comply with the provisions of section 40, or

(*b*) without reosonable excuse, the burden of proving which shall lie on him, fails to deliver any postal article or mail bag or to comply with the directions of the officer in charge of the Post Office at a port of arrival, as reequired by section 41,

shall be punishable with fine which may extend to one thousand rupees.

Penalty for detention of letters on board vessel arriving in port.

66. (1) Whoever, being either the master of a ship arriving at any port in British India or any one on board, knowingly has in his baggage or in his possession or custody, after the postal articles on board or any of them have been sent to the Post Office at the port of arrival, any postal articles within the exclusive privilege conferred on the Governor General in Council by section 4, shall be punishable with fine which may extend to fifty rupees for every such postal article as aforesaid.

(2) Whoever, being such master or other person as aforesaid, detains any such postal article as aforesaid after demand made for it by an officer of the Post Office, shall be punishable with fine which may extend to one hundred rupees for every such postal article.

Penalty for detaining mails or opening mail bag.

67. Whoever, except under the authority of this Act '[or of any other Act for the time being in force] or in obedience to the order in writing of the Governor General in Council or the direction of a competent Court, detains the mails or any postal article in course of transmission by post, or on any pretence opens a mail bag in course of transmission by post, shall be punishable with fine which may extend to two hundred rupees:

Provided that nothing in this section shall prevent the detention of an officer of the Post Office carrying the mails or any postal article in course of transmission by post, on a charge of having committed an offence declared to be cognizable by the Code of Criminal Procedure, 1898, or any other law for the time being in force.

1898.

Penalty for retaining postal articles wrongly delivered or mail bags.

68. Whoever fraudulently retains, or wilfully secretes or makes away with, or keeps or detains, or, when required by an officer of the Post Office, neglects or refuses to deliver up, any postal article in course of transmission by post which ought to have been delivered to any other person, or a mail bag containing a postal article, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.

Penalty for unlawfully diverting letters.

69. Whoever, not being an officer of the Post Office, wilfully and maliciously, with intent to injure any person, either opens or causes to be opened any letter which ought to have been delivered, or does any act whereby the due delivery of a letter to any person is prevented or impeded shall be punishable with imprisonment for a term which may extend six months, or with fine which may extend to five hundred rupees, or with both:

Provided that nothing in this section shall apply to a person who does any act to which the section applies, if he is a parent, or in the position of a parent or guardian, of the addressee, and the addressee is a minor or a ward.

General.

Penalty for abetting, or attemping to commit offences under Act.

70. Whoever abets the commission of any offence punishable under this Act or attempts to commit any offence so punishable, shall be punishable with the punishment provided for that offence.

'These words were inserted by s. 4 of the Indian Post Office (Amendment) Act, 1921 (15 of 1921).

71. In every prosecution for an offence in respect of mail bag or of any postal article sent by post, it shall be sufficient, for the purpose of the charge, to describe the mail bag or postal article as being the property of the Post Office, and it shall not be necessary to prove that the mail bag or postal article was of any vlaue.

Property in cases of offences to be laid in the Post Office.

72. No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (*a*) and (*b*), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director General or a Post Master General.

Authority for prosecutions under certain sections of Act.

CHAPTER XI.

SUPPLEMENTAL.

73. (1) The Governor General in Council may make rules for the management of any zamindari or other district post.

Zamindari and other district posts.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may declare what portions of this Act shall be applicable to zamindari and other district posts and to the persons employed in connection therewith.

74. (1) In addition to the powers hereinbefore conferred, the Governor General in Council may make rules to carry out any of the purposes and objects of this Act.

General power to make rules and provisions as to rules under Act.

(2) In making any rule under this Act, the Governor General in Council may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

(3) All rules made by the Governor General in Council under this Act shall be published in the Gazette of India and, on such publication, shall have effect as if enacted by this Act.

75. The Governor General in Council may, by notification in the Gazette of India, authorize, either absolutely or subject to conditions, the Director General to exercise any of the powers conferred upon the Governor General in Council by this Act, other than a power to make rules.

Delegation of powers other than rule-making powers, to Director General.

76. [*Repeal.*] *Repealed by Act 10 of 1914.*

77. Nothing in this Act shall derogate from or affect the provisions of the East India Company Act, 1780, or any enactment amending or extending the same.

Saving. 21 Geo 3, c. 70.

[1]THE FIRST SCHEDULE.

INLAND POSTAGE RATES.

(See section 7.)

Letters.

For a weight not exceeding one tola	One anna.
For every tola, or fraction thereof, exceeding one tola...	Half an anna.

[1]This Schedule was substituted by s. 4 of the Indian Finance Act, 1938.

Postcards.

Single	...	...	...	...	Nine pies.
Reply	...	...	...	...	One and a half anna

Book, Pattern and Sample Packets.

For the first two and half tolas or fraction thereof	...	Six pies.
For every additional two and a half tolas, or fraction thereof, in excess of two and a half tolas	...	Three pies.

Registered Newspapers.

For a weight not exceeding ten tolas	... ...	Quarter of an anna.
For a weight exceeding ten tolas and not exceeding twenty tolas	... ...	Half an anna.
For every twenty tolas, or fraction thereof, exceeding twenty tolas	... ...	Half an anna.

Parcels.

For a weight not exceeding forty tolas	... ...	Four annas.
For every forty tolas, or fraction thereof, exceeding forty tolas	... ...	Four annas.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Repealed by Act 10 of 1914.

THE TRESURE TROVE ACT, 1954.

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[Translated from the original in Urdu published in Government Gazette dated 6th Jeth 1954.]

THE TREASURE TROVE ACT, 1954.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide Council Resolution No. 37, dated 30th January 1897.)

WHEREAS it is expedient to enact the law relating to Treasure Trove, it is hereby commanded as follows:—

1. This Act may be called the Jammu and Kashmir Treasure Trove Act.

2. It shall not apply to a treasure which does not exceed in amount or value of ten rupees and is found from the house in which finder resides or from a *Ahata* belonging to the finder and which is in his actual possession. But if a treasure consisting of an ancient coins, is found, the finder shall immediately deposit the treasure in the nearest Government Treasury. The finder of such a treasure shall be entitled to such a compensation as may be deemed reasonable by a competent authority after taking into consideration the value of the treasure or rate prevalent thereof.

3. Treasure means anything of any value hidden in the soil, or in anything affixed thereto.

The word "Chief Revenue Officer" means the Governor of a Province and in case the Governor delegates his functions

in this respect to a Wazir Wazarat, the Wazir of a Wazarat will be considered Chief Revenue Officer for the purposes of these Rules.

4. When a person is in possession of a land or of anything affixed thereto, in pursuance of the terms of a deed of transfer from the original owner, the person in possession shall be held to be bound by these rules if a treasure be found on that land.

5. Whenever any treasure exceeding in amount or value of ten rupees is found, the finder shall give to the Governor having jurisdiction notice in writing as early as practicable—

(a) of the nature and amount or approximate value of such treasure;

(b) of the place in which it was found;

(c) of the date of the finding;

and either deposit the treasure in the nearest Government Treasury, or give the Governor such security as the Governor may think fit to produce the treasure at such time and place as he may appoint.

6. On receiving such a notice, the Wazir Wazarat shall, after making a summary enquiry, (if any) submit a report regarding the following to the Governor of the Province—

(i) the nature, amount or value of the treasure found;

(ii) the place in which the treasure was found,

(iii) the name of the finder and of owner of the place, in which the treasure is found;

(iv) any other information which may be necessary to communicate in this behalf.

7. On receiving such an information, the Governor shall, if no summary enquiry under Section 6, has been held, either hold an enquiry himself or direct the Wazir concerned to enquire into the matter.

8. After an enquiry is held on spot, the Governor or the Wazir Wazarat (if the Governor may make over the enquiry to him taking into consideration the difficulties to which the concerned persons will be subjected if ordered to appear at the Governor's head-quarter) shall take the following steps namely:—

(a) he shall publish a notification to the effect that on a certain date, certain treasure mentioning its nature, amount and approximate value, was found in a certain place, requiring all persons claiming the treasure or any part thereof, to appear personally or by agent before the Governor or the Wazir Wazarat as the case may be, on a day and at a place therein mention ed, such day not being earlier than 3 months, or later than 6 months, after the date of publication of a notification.

(b) When the place in which the treasure appears to the Governor to have been found was on the date of the find-

ing in the possession of some person other than the finder, the Governor or the Wazir Wazarat as the case may be, shall also serve on such other person a special notice in writing to the same effect.

9. Any person having any right to such treasure or any part thereof, as owner of the place in which it was found or otherwise, and not appearing as required by the notification issued under Section 8, shall forfeit such right.

10. On the day notified under Section 8 the Governor or the Wazir Wazarat as the case may be, shall cause the treasure to be produced before him and shall enquire as to and determine:—

(a) the person by whom, the place in which and the circumstances under which such treasure was found; and

(b) as far as possible the person by whom such treasure was hidden.

11. Subject to the Rules which may be framed under provisions of this Act the treasure trove shall be divided up equally between the Government on one hand and the finder and the persons appearing as required by the notification under Rule 8 and claiming such treasure, on the other.

12. If, on enquiry made under Section 10, the Governor or the Wazir Wazarat sees reason to believe that the treasure was hidden within one hundred years, before the date of the finding, by a person appearing as required by the said notification and claiming such treasure, or by some other person under whom such person claims, the Governor shall make an order adjourning the hearing of the case for such period as he deems sufficient to allow of a suit being instituted in the Civil Court by the claimant to establish his right.

13. If, upon such enquiry the Governor or the Wazir Wazarat as the case may be, sees no reason to believe that the treasure was so hidden, or if where a period is fixed under Section 12, no suit is instituted as aforesaid within such period to the knowledge of the Governor, or if such suit is instituted within such period and the plaintiff's claim is finally rejected the Governor may declare the treasure to be ownerless. Any person aggrieved by a declaration made under this Section may appeal against the same within two months from the date thereof to the Revenue Minister.

Subject to such appeal every such declaration shall be final and conclusive.

14. When a declaration has been made in respect of any treasure under section 13, half treasure shall, in accordance with the provisions hereinafter contained, either be delivered to the finder thereof or be divided between him and the owner of the place in which it has been found in manner hereinafter

provided and the remaining half shall be deposited in the Government treasury. A finder or owner of the place where treasure is found shall not be entitlted to more than half the treasure.

15. When a declaration has been made in respect of any treasure as aforesaid, and no person other than the finder of such treasure has appeared as required by the notification published under Section 8 and claimed a share of the treasure as owner of the place in which it has been found the Governor shall deliver the share to the finder therof.

16. When the declaration has been made as aforesaid in respect of any treasure, and only one person other than the finder of such treasure has so appeared and claimed, and the claim of such person is not disputed by the finder, the Governor shall proceed to divide half of the treasure between the finder and the person so claiming according to the following rule, namely:—

If the finder and the person so claiming have not entered into any agreement then in force as to the disposal of the treasure, one-fourth of the value of the treasure shall be allotted to the finder. And if the finder and such person have entered into any such agreement, the half of the amount of the treasure shall go to the Government and the remaining half shall be disposed of in accordance therewith.

Provided that the Governor may, in any case, if he thinks fit, instead of dividing the treasure as directed by this section—

(a) allot to either party the whole or more than his share of such treasure, on such party paying to the Governor for the other party such sum of money, as the Governor may fix as the equivalent of the share of such other party or of the excess so allotted, as the case may be, or

(b) sell half the portion or any portion of that half by public auction and divide the sale proceeds between the parties according to the rule hereinbefore prescribed.

Provided also that when the Governor has by his declaration under section 13 rejected any claim made under this Act by any person other than the said finder or person claiming as owner of the place in which the treasure was found, such division shall not be made until after the expiration of two months without an appeal having been presented under section 13 by the person whose claim has been so rejected. or when an appeal has been so presented after such appeal has been dismissed.

When the Governor has made a division under this section, he shall deliver to parties half of such treasure or the money in lieu thereof to which they are respectively entitled under such division.

17. When a declaration has been made as aforesaid in respect of any treasure, and two or more persons have appeared as aforesaid and each of them claimed as owner of the place where such treasure was found, or the right of person who has so appeared and claimed is disputed by the finder of such treasure, the Governor shall deposit such treasure in the State treasury and shall make an order staying his proceedings with a view to the matter being enquired into and determined by a civil court.

18. Any person who has so appeared and claimed may, within one month from the date of such order, institute a suit in the civil court to obtain a decree declaring his right; and in every such suit the finder of the treasure and all persons disputing such claim before the Governor shall be made defendants.

19. If any such suit is instituted and the plaintiff's claim is finally established therein, the Governor shall subject to the provisions of Section 11, divide the treasure between him and the finder. If no such suit is instituted as aforesaid, or if the claim of the plaintiff in all such suits are finally rejected, the Governor shall deliver half the amount of the value of the treasure to the finder and the other half shall be the property of the Government.

20. The Governor may at any time after making a declaration under Section 8, and before delivering or dividing the treasure as hereinbefore provided, declare by writing under his hand his intention to acquire on behalf of the Government the treasure or any specified portion thereof which is not less than half of it, by payment to the persons entitled thereto of a sum equal to the value of the materials of such treasure or portion and may place such sum in deposit in the State treasury to the credit of such persons, and thereupon such treasure or portion shall be deemed to be the property of the Government, and the money so deposited shall be dealt with, as far as may be, as if it were such treasure or portion.

21. No decision passed or act done *bona fide* by the Governor under this Act shall be called in question by any civil court and no suit or other proceedings shall lie against him for anything done in good faith in exercise of the powers hereby conferred.

22. An officer making any inquiry under this Act may exercise any power conferred by the Code of Civil Procedure for the trial of suits.

[1]**23.** The Government may from time to time make rules to carry out the purposes of this Act.

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[1]Section 23 substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

PENALTIES.

24. If the finder of any treasure fails to give the notice or does not either make the deposit, or give security, required by section 5, or alters or attemps to alter such treasure so as to conceal its identity the share of such treasure or the money in lieu thereof to which he would otherwise be entitled, shall vest in His Highness the Maharaja Bahadur, and he shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

25. If the owner of the place in which any treasure is found abets, within the meaning of the 'Ranbir Dand Bidhi, any offence under Section 24, the share of such treasure, or the money in lieu thereof to which he would otherwise be entitled, shall vest in His Highness the Maharaja Bahadur, and he shall on conviction before a Magistrate, be punished with imprisonment which may extend to six months, or with fine or with both.

NOTIFICATION NO. 13.

Dated 25th Bhadon 1966.

REGARDDING THE TREASURE TROVE LAW.

His Highness the Maharaja Bahadur (*vide* His Highness' command dated 20th June 1920) has been pleased to command that in accordance with the Government of India Resolution No. 6/1668, 82 dated 9th October 1884 instructions be issued to the concerned officers under the law in force in the State with regard to treasure trove so that coins that are found may first be sent to the Asiatic Society of Bengal. In every such case, however, orders of the Government shall first be obtained. When the coins have been received back they shall be kept in the Sri Pratap Museum at Srinagar. His Highness the Maharaja Bahadur has further been pleased to command that there is no objection to an observance of these instructions and that in case two or more coins of the same specimen are found at the same time, there is no objection to keeping the spare coins with the Asiatic Society of Bengal.

The apparent object of this Resolution is the examination by experts of all ancient coins, and the procedure laid down

[1]Ranbir Penal Code.

in the Resolution is, in the opinion of His Highness the Maharaja Bahadur, such as will fulfil this object. This will certainly not deprive the local State Museums from having a store of interesting and valuable articles of ancient times the object with which, among other objects, these museums were established. It is therefore notified that the Resolution given below shall form an annexure to the Treasure Trove Rules:—

NO. 889-903.

GOVERNMENT OF INDIA.

Home Department.

PUBLIC.

Calcutta, the 30th March 1907.

RESOLUTION.

READ :

Resolution No. 46-1668-82, dated 9th October 1884, Circular letter Nos. 2193-2202, dated the 29th June 1905, to various Local Governments and their replies.

The resolution quoted above contains some general instructions for the procedure to be adopted in dealing with cases of treasure trove consisting of coins. Since it was issued a few modifications have been made from time to time, and it was recently brought to the notice of the Government of India that the procedure followed by the different Local Governments and Administrations was by no means uniform. Reports have now been received showing the system in force, and the experience of more than twenty years, points to the the expendiency of consolidating and amending the instructions issued in 1884, and succeeding years.

2. Among the questions which arise the three most important are:—

(1) the skilled examination of coins;
(2) the selection and distribution of specimens; and
(3) the disposal of the surplus.

Before considering the first of these it may be noted that the orders of 1884 laid down that all coins found as treasure trove should invariably be acquired. The necessity for this direction was subsequently questioned and by Resolution No. 1/13-27 dated January 5th 1885, it was laid down that

while this practice should ordinarily be continued it need not be followed in exceptional cases where large numbers of worthless specimens were concerned. From the reports now received it appears that such cases are more frequent than was supposed. It is, therefore, desireable that full discretion should be allowed by the rules in all cases, subject to the condition that it will be exercised after the examination by experts referred to in the next paragraph.

3. According to the instructions as modified from time to time, coins found in the Madras Presidency are examined by the authorities of the Madras Museum, those found in the Bombay Presidency are dealt with by the Bombay Branch of the Royal Asiatic Society, those found in Burma are sent to the Superintendent Indian Museum, and all other cases of treasure trove are referred to the Asiatic Society of Bengal. As the Superintendent of the Indian Museum generally has no knowledge of numismatics, the few coins sent up from Burma have, in practice, been dealt with by the Asiatic Society of Bengal, which is thus supposed to be responsible for examining and reporting on all coins found in India, except cases from the Madras and Bombay Presidencies. The Numismatic Secretary of this Society reports that in 1905 he examined about 9,000 coins, and from the information before it the Government of India has reason to believe that the task imposed on the Society is excessive, and has sometimes led to delay. It would also appear that sufficient importance has hitherto not been attached to the preparation of a detailed record of the origin, surroundings and exact nature of each find. Such a record may be of value for two reasons. It may throw light on the history of the place of discovery or it may give a clue to the attribution and arrangement of different series of coins about which little can be gathered from the inscriptions or devices on the coins themselves. While a single find is often of little value *per se* the cumulative evidence of a series of careful records may lead to conclusions of the highest importance. To make these records easily accessible it is desirable that they should be prepared on uniform lines. Forms which have been found suitable after the experience of a number of years, are attached to this resolution and the Government of India desire that they may be adopted. The preparation of such reports in all cases adds to the responsibility and labour of the expert who examine coins, and thus increases the disadvantages of unduly centralising this work. The Governments of the United Provinces and the North-West Frontier Province have already been able to make arrangemments independently of the Asiatic Society of Bengal for the

examination of coins found within their jurisdiction. The field of Indian Numismatics is so large that the co-operation of a number of workers is essential, if the work is to be done satisfactorily, while it has been found that the development of local interest through the Association of a number of numismatists in the examination of treasure trove has also led to the improvement of provincial coin cabinets in other ways. The Director General of Ar hæology will be asked to maintain a list of numismatists who are willing to undertake the examination of coins, and local Governments which desire to make any changes in the existing method of obtaining reports on coins are requested to communicate with him. A brief summary of the results of each year should be prepared in each province. It should show the total number of coins dealt with in the year, classifying them by metal, and also roughly by the series in which they belong. The details of the classification will of course vary in each province, but a suitable form for Northern India will be found in paragraph 10 (II) of the Lucknow Museum Report for 1904-05. Another table should show the number of the coins distributed and it will be convenient to give a short account of any notable finds, detailed publication being reserved for the regular scientific journals. The reports may be published in any annual report which local Government desire, but copies in manuscript should be sent to the Director General of Archæology who will arrange for the preparation of a summary to appear in his annual report.

4. When the coins have been examined and described it is necessary to consider the order in which specimens acquired should be distributed. The orders of 1884, as modified to date, prescribe that if a single specimen is available it should be presented to the Indian Museum, while if more specimens are found, they should be supplied to (1) the Asiatic Society of the Presidency in which the coins were found, (2) the other Asiatic Society (or the Phayre Museum, Rangoon, in the case of coins found in Burma), (3) the Madras Museum, (4) the Indian Museum, (5) the British Museum, (6) the Lahore Museum, (7) the Nagpur Museum, (8) the Lucknow Museum, (9) the Public Library, Shillong and (10) the Archæological Museum, Poona. After a careful review of the circumstances the Government of India are of opinion that the order of the distribution should be changed. It has has been urged that first choice should invariably be given to the Indian Museum, on the ground that the convenience of students is best served by bringing all coins together in a single institution. So far as the study of numismatics from published catalogues is con-

cerned, it may be observed that the collection in the Indian Museum is in some respects less complete than those in other parts of India and markedly inferior to cabinets in Europe. If the study of actual coins is considered, the question of distance arises, and it is probable that students in Southern India or the Punjab, for example, would visit Madras or Lahore rather than Calcutta. But apart from these considerations more importance must be attached to the desirability of encouraging local interest. Treasure trove is not the only source from which the provincial collections have been enriched, and on this ground alone the Government of India hold that the first choice should be given to the Chief museum officially recognised in the province where treasure trove is found, and the second choice to the Indian Museum. They also think that public collections should take precedence of those of the two Asiatic Societies, and that Indian Institutions should be supplied before the British Museum. The Government of India have likewise considered the principles which should govern the distribution of coins where more than two specimens are found, and they are inclined to think that the simplest procedure is to lay down a fixed order, which has been drawn up on a consideration of the existing circumstances of the various institutions. They, therefore, desire that the following order may be observed:—

1. The principal museum in the province in which the treasure is found.
2. The Indian Museum.
3. The Madras Museum.
4. The Provincial Museum Lucknow.
5. The Lahore Museum.
6. The Nagpur Museum.
7. The Public Library, Shillong.
8. The Archæological Museum, Poona.
9. The Peshawar Museum.
10. The Quetta Museum.
11. The Ajmer Museum.
12. The Rangoon Museum.
13. The Asiatic Society, Bengal.
14. Bombay Branch, Royal Asiatic Society.
15. The British Museum.

From the reports received it is noticed that some local Governments have presented specimens to more than one-institution within their jurisdiction. The Government of India do not object to this, but they request that for purposes of distribution precedence may be given to the fifteen cabinets named above.

5. It is obviously unnecessary to present coins to an institution, which already possesses exactly similar specimens. To facilitate the selection and to avoid the accumulation of duplicates it is desirable that, wherever possible, complete catalogues of the existing collections should be published, or if these cannot be arranged for, hand lists might be printed giving such details of the coins in each cabinet that they can be recognised.

6. Under the instructions now in force coins which have been acquired, but are not required for presentation are disposed of at the mints at Bombay and Calcutta at their numismatic value as stated by the experts who have examined them. Owing to the practice under which finds of coins were acquired before they had been examined, the result has been that a very large proportion were absolutely unsaleable and have had to be melted down. Paragraph 2 of this resolution directs that the practice of indiscriminate acquisition should be discontinued. When a finder of coins contains more specimens of a single variety than are required for the purpose of presenting one to each cabinet on the list which requires it, the expert dealing with the case should use his discretion in recommending the acquisition of the whole or part of the remainder for sale at their numismatic value. Surplus coins carefully selected in this manner have been readily disposed of in one province, where they are offered for sale at the art depot in the local museum, and the local Governments should consider whether they can make similar arrangements. Lists of the coins available should be advertised from time to time in the local gazette, and copies should be sent to any numismatists who register their names, as has been the practice hitherto at the mints. It has been usual in some places to allow the decipherer of the coins to retain a specimen when duplicates were available and the Government of India approve of this with some reservations. No official who is entrusted with the examination of coins as part of his ordinary duties should receive this concession. Coins should only be retained where specimens remain over after all cabinets on the list have been supplied and only one specimen should be kept of each variety. Local Governments will satisfy themselves by calling for such details as they think necessary that the privilege is not abused.

7. Under section 19 of the Indian Treasure Trove Act (VI of 1878) the power of making rules to regulate proceedings under the Act is vested in the local Governments The Government of India desire that the rules now in force may be examined and modified, where necessary, in accordance with

the preceding paragraphs. Copies of the revised rules should be forwarded to the Home Department of the Government of India and the Director General of Archæology for record. While the rules are under consideration the procedure followed in reporting finds of coins and in distributing them should also be examined. It is noticed that the details vary considerably in different provinces; and while absolute uniformity is not desired, the need for simplification as far as possible is obvious. The procedure followed in one Province is described in an appendix to this resolution, and appears suitable, though it is open to doubt whether the intervention of the Commissioner is necessary. It is probably sufficient that correspondence should be confined to the district office who reports finds, the expert who examines them and the local Government which sanction the acquisition and distribution. In some provinces the examination by experts is postponed till acquisition is complete. Owing to the modifications in procedure indicated in paragraph 2, it will now be necessary to have the coins examined as soon as possible after they reach the Collector of the district.

APPENDIX

The procedure followed under these rules takes the following form. The coin committee selects its own Secretary, the nomination being submitted to Govenment for approval. District Officers report all cases of treasure trove consisting of coins not of British mintage through Commissioners to Government and at the same time send specimens of the coins or the whole find direct to Government (Financial Department). The file in original and the coins are sent (by Government) to the Secretary to the Coin Committee, who may correspond direct with Collectors if he desires to see the whole of the coins. The Secretary then prepares a detailed description of the coins, and frames proposals for acquiring and distributing them, which are circulated to the other members of the Committee for their remarks. Printed forms are used for this purpose copies of which are enclosed. On the return of proposals the Secretary places in the file a short report which gives a very brief description of the coins, the intrinsic value of those which the committee think should be acquired and the number to be presented to each institution. The Secretary at the same time returns the coins arranged in the manner proposed for distribution, and the coins are actually distributed by Government. As the Secretary has always been an official and has little correspondence, no extra establishment was required, and postal charges have been met from his office grant.

FILL UP NUMBER OF COINS HERE.

Report No. *Dated.* *Regarding coins found at* *District.*
and received from the Collector under his letter No. *Dated*

(Form to be used for report regarding coins of every kind except coins of Moghuls).

Number and description of treasure trove.	Inscriptions on the Head.	Inscription on the Tail.	Remarks.	*Details of coins to be taken for distribution.*														Coins for sale to be purchased at the following rates.	

Report No. *Dated* *Number of coins* *which were found at*

District *and the No. and date of letter of Collector (or other officer or his name) from whom received.*

(Form for the examination of coins of Moghul Emperors.)

	Number and description of treasure troves
	Name of King.
	Name of mint.
	Sample.
	Ya Ellahi.
	Hijri.
	Month.
	Local Museum of Province where coins found.
	Indian Museum Calcutta.
	Madars Museum.
	Provincial Museum Lucknow.
	Lahore Museum.
	Nagpur Museum.
	Public Library Shillong.
	Archæological Museum Poona.
	Peshawar Museum.
	Quetta Museum.
	Ajmeer Museum.
	Rangoon Museum.
	Asiatic Society Bengal.
	Royal Asiatic Society Bombay Branch.
	Britain Museum.
	Coins to be kept for sale at the following places.

[*Translated from original in Urdu published in Government Gazette dated 18th Katik 1954.*]

NOTIFICATIONS REGARDING COINAGE.

NOTIFICATION NO. 22.

Dated 18th Katik 1954.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur in Council.*)

Introduction of British Indian Coinage in place of State Chilki Coinage.

His Highness the Maharaja Bahadur in Council with the approval of the Government of India has been pleased to command that the *chilki* Coinage current in the State now for sometime on account of economic depression be replaced by British Indian Coinage; and after the expiry of a period of six months from the date of issue of this Notification only British Indian Coinage be regarded as legal tender in the territories of the Jammu and Kashmir State. The following rules are therefore framed with a view to enable the public to exchange the current *chilki* Coins of the State for British Indian Coinage and further to declare British Indian Coinage alone as legal tender in the State.

(a) From the State treasuries situated at Jammu, Srinagar, Gilgit, Skardu and Ladakh fifty-nine British Indian rupees shall be given in exchange for one hundred *asal chilki* rupees and forty-eight British Indian rupees and annas three shall be given in exchange for one hundred *asal kham*.

(b) It shall be incumbent on every person who desires exchange of coinage to submit a written application to Treasury Officer along with *chilki* or *kham* rupees during office hours and such applications shall be considered in the order of their receipt.

(c) After the expiry of the period of six months fixed under this Notification, the State Coinage shall neither be accepted in lieu of any Government dues, nor shall this coinage be legal tender in the discharge of debts, because British Indian Coinage alone will be regarded as legal tender in the State. Contracts entered into after the date fixed in the Notification specifying payment in State Coinage shall be void and no court shall be competent to pass a decree on the basis of such an agreement.

(d) All rules and laws in force now regarding the cut ting and breaking up of silver coins of the British Indian Gov ernment which due to wear or in any other way have diminished in weight or are counterfeit or have been requisitioned for being returned to the treasury under some notification, shall be applicable to this British Indian Coinage which is current in the Jammu and Kashmir State after the issue of this Notification and the State shall be responsible for all expenses in connection with the cutting and breaking up of such coins.

(e) After the 20th April 1898 A.D. the coinage of the State shall be accepted for sale on the current rates of silver. Rules regarding silver shall be applicable with regard to such coins.

(f) All officials as well as the subjects of the State are hereby ordered that they should keep on the look out and be careful to note that no person counterfeits State Coins. Any person who supplies information in this behalf which leads to the conviction of a person counterfeiting State Coins shall receive 30 per cent. as reward and over and above that all counterfeit coins after being broken up shall also be awarded to him.

(g) On 30th April 1898 and after that all business transactions shall be carried on in British Indian Coinage and all due demands of one person from another shall be payable only in terms of British Indian Coinage.

[*Translated from original in Urdu published in Government Gazette dated 14th Poh 1954*].

NOTIFICATION NO. 25.

Dated 2nd Poh 1954.

Rules regarding introduction of British Indian Coinage in place of Chilki and Kham Coinages.

The following rules regarding introduction of British Indian Coinage in place of *chilki* and *kham* coinages have been sanctioned by the State Council under Resolution No. 30 dated 20th November 1897 and are published for general information.

1. With effect from 1st May 1898 only the British Indian rupees, eight annas pieces, four annas pieces and two annas pieces shall be regarded as legal tender in the State. Laws and Rules in force in British India on 1st November 1898 regarding cutting and breaking up of British Indian Silver Coinage diminished in weight due to wear or some other reason or

due to its being base, or having been with drawnfrom circulation by notification, shall apply to all British Indian Silver Coinage current in the State.

* * * * * * *

[*Translated from original in Urdu published in Government Gazette dated 12th Phagan 1954.*]

NOTIFICATION.

Replacement of State Bronze Coinage.

With the sanction of the State Council (*vide* Resolution No. 21 dated 7th February 1897) it is hereby notified for general information that with effect from 1st Baisakh 1955 and thereafter the bronze coinage of the State shall be replaced by the bronze coinage of British India in the Jammu and Kashmir State.

[*Translated from original in Urdu published in Government Gazette dated 19th Phagan 1954.*]

NOTIFICATION NO. 34.

Dated 8th Phagan 1954.

Regarding date and restricting of the return of State Coinage into treasuries.

The State Council (*vide* Resolution No. 30 dated 7th February 1897) have sanctioned the following notification which is therefore published for general information:—

State coinage shall not be accepted into State treasuries after 20th Phagan 1954 corresponding to 11th March 1898 unless in special cases such coinage has not been or could not have been paid into the treasury for a special reason. Such cases shall be decided by the Accountant General.

[*Translated from original in Urdu published in the Revenue Circular Vol. III, page 118.*]

NOTIFICATION NO. 4.

Dated 9th Bhadon 1960.

Introduction of sovereigns and half sovereigns in the State.

Under Resolution No. 44 dated 23/26th May 1903 the State Council have resolved that in accordance with the Rules

now in force in British India gold coinage (sovereigns and half sovereigns) be introduced in the Jammu and Kashmir State also.

Copy of a letter No. 14209, dated 12th April 1919, from the Chief Minister, Jammu and Kashmir State, Jammu, to the Judge High Court, Jammu and Kashmir State, Jammu.

With reference to your letter No. 5405/7.L-18, dated 22nd February 1919, I have the honour to inform you that His Highness the Maharaja Sahib Bahadur has been pleased to accord his sanction to the promulgation of the draft Notification regarding prohibition to accept or offer a coin for amount exceeding its face value as recommended by you.

NOTIFICATION.

Whoever sells or purchases or offers to sell or purchase any coin—which is a legal tender under any enactment for the time being in force in British India—for an amount exceeding the face value of such coin, or accepts or offers to accept any such coin in payment of a debt or otherwise for an amount exceeding its face value, shall be punishable with imprisonment for a term which may extend to 3 years, or with fine, or with both.

Explanation.—For the purposes of this rule the face value of a [1]sovereign shall be deemed to be fifteen rupees and the face value of other gold coins described in Section II of the India Coinage Act 1906, shall be the corresponding proportion of fifteen rupees.

THE CUSTOMS ACT, 1958.

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THE JAMMU AND KASHMIR CUSTOMS ACT, 1958.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 8, dated 4th December 1901.)

An Act to consolidate and amend the Customs Law of the Jammu and Kashmir State.

WHEREAS it is expedient to consolidate and amend the law relating to the levy of Customs duties in the Jammu and Kashmir State; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. This Act may be called the Jammu and Kashmir Customs Act, 1958.

It extends to the whole of the territories of His Highness the Maharaja Bahadur of Jammu and Kashmir, and shall come into force in any local area within the said territories from such date and to such extent as His Highness the Maharaja Bahadur [1][or the Government] by notification in the "Jammu and Kashmir Government Gazette" shall direct.

Repeal of existing enactments and orders.

2. From the date on which this Act shall come into force in any such local area in the said territories, all enactments, rules and regultions in force therein concerning the levy of customs duties or other matters connected with the same, except such of them as are specially saved by notification by [2][the Government] shall be hereby repealed.

[1]In section 1 words "Government" added *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996 and word "or" inserted *vide* Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997.

[2]Substituted for "His Highness the Maharaja Bahadur" by Act X of 1996.

3. In this Act, unless there be something repugnant in the subject or context,—

Interpretation.

(a) "[1][Inspector General] of Customs and Excise" denotes the person authorized to exercise, subject to the approvel of [2][the Government] the chief control in matters relating to the Customs and Excise revenue.

"Superintendent of Customs and Excise".

(b) "Inspector of Customs and Excise" denotes the Chief Executive Officer of the Customs and Excise Department for any Province to which this Act applies.

"Inspector of Customs and Excise".

(c) "Customs and Excise Officer" includes every officer of the Customs and Excise Department for the time being in separate charge of a range or customs post or *mahal*, or duly authorized to perform all, or any special duties of an officer so in charge.

"Customs and Excise Officer".

CHAPTER II.

APPOINTMENT AND POWERS OF OFFICERS ETC.

4. [2][The Government] may appoint such officers as it thinks fit to be Inspector General of Customs and Excise, Inspectors of Customs and Excise and Customs and Excise Officers, and the Officers so appointed shall exercise the powers conferred and perform the duties imposed by this Act upon such officers.

Appointment of Customs and Excise Officers.

5. [2][The Government] may delegate any of the powers conferred by section 4 to any of the officers named therein, and may further empower them to appoint such other servants as are necessary for the carrying out of this Act.

Delegation of power conferred by section 4.

Every person appointed in the exercise of such delegated power may be suspended or dismissed by the officer who appointed him.

Suspension and dismissal of subordinate officers.

6. [2][The Government] may also from time to time make rules consistent with this Act—

Powers to make rules regulating the duties of Officers under this Act and the delegation of the same.

(a) prescribing and limiting the powers and duties of Customs and Excise Officers and

(b) regulating the delegation of duties to and by such officers.

[1]"Inspector General" substituted for "Superintendent" wherever it occurs *vide* Notification published in Government Gazette dated 10th Sawan 1986.

[2]Substituted for "His Highness the Maharaja Bahadur" by Act X of 1996.

CHAPTER III.

IMPOSITION AND LEVY OF CUSTOMS DUTIES.

7. Duties shall be levied on all such articles imported into or exported from the territories of His Highness the Maharaja Bahadur of Jammu and Kashmir from or into British India, foreign territory or the Illaqa of Poonch [1][ ] respectively, and at such rates as [2][the Government] may from time to time direct by notification in the Jammu and Kashmir Government Gazette.

Duties to be levied on such articles and of such rates as His Highness the Maharaja Bahadur may by notification direct

8. The rates at which such duties are imposed shall ordinarily be either fixed rates per unit of quantity or number or percentage rates on the value of the goods.

Such duties shall be either at fixed rates per unit or *ad-valorem*.

For the purpose of calculation of the latter the value of the goods shall be deemed to be—

Definition of "value" to be applied in calculating *ad-valorem* rates.

(a) the wholesale cash price, less trade discount, for which goods of the like kind and quality are sold or are capable of being sold at the time and place of importation or exportation, as the case may be, without any abatement or deduction whatever except (in the case of goods imported) of the amount of duties payable on the importation thereof; or

(b) when such price is not ascertainable, the cost at which goods of the like kind and quality could be delivered at such place without any abatement or deduction except as aforesaid.

9. The owner of any goods imported into or exported from the territory of His Highness the Maharaja Bahadur shall be bound, if required to do so by a Customs and Excise Officer, to file, either personally or by a agent, at the customs post of entry or exit, as the case may be, an invoice stating the quantity, description and value of such goods to the best of his knowledge and belief, and the Customs and Excise Officer in charge of such post may further require any such person or any other person in possession of any bill, broker's note or other document, whereby the quantity, description or value of any such

Owner to declare quantity, description and value of goods imported or exported.

[1]In section 7 words "or Bhadarwah" deleted in view of the fact that Bahadarwah is amalgamated to the administration of the State from 1st Katik 1986 *vide* His Highness' Command dated, October 13, 1929 publisqed in Government Gazette dated 8th Katik 1986. *See* Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997.

[2]Substituted for "His Highness the Maharaja Bahadur" by Act X of 1996,

goods can be ascertained, to produce the same and to furnish, any information relating to such quantity, description or value which it is in his power to furnish, and thereupon such person shall produce such document and furnish such information.

Powers to open packages and examine goods and to take samples.

10. Notwithstanding the production of such invoice and the furnishing of such documents or information, any Customs and Excise Officer at a post of import or export may open any package and examine any goods proposed to be imported or exported by his post, and may further take samples of such goods for examination or for ascertaining the value thereof on which duties are payable or for any other necessary purpose.

Every such sample shall, if practicable, be, at the option of the owner, either restored to him or sold and the proceeds accounted for to him.

Provided, in the case of the Kashmir Province, that, if the Inspector General of Customs and Excise shall so order, the goods of any specified traders or goods imported by any specified agency may be treated as goods in bond pending their arrival at a Srinagar Customs Post ; or in. the case of traders of Muzaffarabad at Muzaffarabad.

Provided also that the luggage belonging to respectable travellers, European or Native, will be treated as in bond pending its arrival at its destination where the necessaary assessments and recovery of duty due will be effected.

Duties when and where to be paid.

11. The duties found to be leviable with reference to the invoice and examination provided for above must be paid in full before the goods pass the Customs post of import or export, as the case may be, and the Customs and Excise Officer at the post of import or export will be required to detain all goods on which the duties are not paid in full, such detention being entirely at the risk of the owner.

Proviso as to goods of privileged trader.

Provided that, in case of goods of the privileged traders or imported by the privileged agencies referred to in section 10 above, payment into a Customs Treasury at Srinagar or Muzaffarabad will be allowed, such payment to be made prior to removal of the goods from the Srinagar Customs Office, or from a place at Muzaffarabad specified in this behalf and in respect of all such goods as passed the frontier no deduction on account of wastage, theft or the like being allowed.

Procedure in of case import in bond under the Commercial Treaty of 1870.

12. The above procedure will not apply to the case of goods transported through India in bond under the provisions of the Commercial Treaty of the 2nd May, 1870, between the

British Government and His Highness the Maharaja Bahadur of Jammu and Kashmir. Duty on these goods will be levied at the British Indian tariff rate at the post of import, and, if they are transported to the territories of His Highness the Maharaja Bahadur will be credited to his Government, and if to Central Asia, refunded to the traders. When the rates of duty in force in Jammu and Kashmir exceed those in force in British India, the difference will be collected on import of goods brought to the territories of His Highness the Maharaja Bahadur under such arrangements as [1][the Government] may from time to time prescribe.

[2][ ].

Alteration of duty when to have effect.

13. The rate of duty applicable to any goods imported or exported shall be the rate in force on the date on which the invoice thereof is delivered to the Customs and Excise Officer under section 9.

Provided that, if such goods are warehoused under this Act, the rate applicable thereto shall be that in force on the date on which application is made to clear such goods from the warehouse.

[3]"Provided also that articles imported in bond, shall be liable to duty at the same rates at which they are shown to have been assessed in the British Indian Customs House invoices covering their import excepting the articles for which special rates are prescribed by Notification No. 5 issued under this Act."

Goods composed partly of dutiable articles or of a combination of articles which are dutiable at different rates.

14. When goods are composed partly of dutiable articles or of a combination of articles that are dutiable at different rates, such goods shall be chargeable with the full duty which would be payable if they were entirely composed of the articles chargeable with the highest rate of duty.

Owner to pay expenses Incidental to compliance with Customs law.

15. The unloading of all goods, and the bringing of them to the proper place for examination and weighing, and the putting of them into and out of the scales, and the opening, unpacking, bulking, sorting, lotting, marking and numbering of goods, when such operations are necessary or permitted and the removing of goods to, and the placing of them in the proper place of deposit, shall be performed by or at the expense of the owner of such goods.

[1]Substituted for "His Highness the Maharaja Bahadur" *vide* Act X of 1996.
[2]Section 12 Paras 2 and 3 deleted *vide* Act 11 of 1997.
[3]Proviso to section 13 added *vide* Notification published in Government Gazette dated 27th Katik 1969.

Payment of duties short levied or erroneously refunded.

16. When Customs duties or charges have been short levied through inadvertence, error, collusion or misconstruction on the part of the Customs and Excise Officers or through mis-statement as to their quantity, description or value on the part of the owner, or when any such duty or charge after having been levied has been owing to any such cause erroneously refunded the person chargeable with the duty or charge so short levied or to whom such refund has erroneously been made shall pay the deficiency or repay the amount paid to him in excess on demand being made within three months from the date of the first assessment or the making of the refund; and the Customs and Excise Officer may refuse to pass any goods belonging to such person until the said deficiency or excess be paid or repaid.

No refund of charges erroneously levied or paid unless claimed within three months.

17. No customs duties or charges which have been paid, and of which repayment, wholly or in part, is claimed in consequence of the same having been paid through inadvertence, error or misconstruction shall be returned, unless such claim is made within three months from the date of such payment.

"Cla ms for refunds annually granted to persons holding Muafis of fixed monetary values shall be subject to the same limit of time as is laid down herein above but the period of three months in this case shall commence from the 1st day of the year following that to which the claim for refund may relate."

Power to give credit for and keep amount current of duties and charges.

18. The Inspector General of Customs and Excise may, if he thinks fit, instead of requiring payment of Customs duties and charges due from any mercantile firm or public body at the time such duties and charges are payable under this Act, keep with such firm or body an account current of such duties and charges. Such account shall be settled at intervals not exceeding one month, and such firm or body shall make a deposit or furnish security sufficient in the opinion of the Superintendent of Customs and Excise to cover the amount which may at any time be due from them in respect of such duties and charges.

CHAPTER IV.

EXEMPTION FROM CUSTOMS DUTIES.

[1]**19.** Omitted.

[1]Section 19 omitted *vide* Notification published in Government Gazette dated 11th Baisakh 1988.

Goods passing through Kashmir to Central Asia exempt so long as the provisions of the Treaty of 1870 are complied with.

20. Goods imported by traders with Central Asia shall be similarly exempt so long as they are not sold within the Provinces to which this Act applies and the provisions of the Commercial Treaty of the 2nd May, 1870, between the British Government and His Highness the Maharaja Bahadur are complied with.

Baggage in personal use to be passed free.

21. The Customs and Excise Officer may further, subject to such rules as may be passed by [1][the Government] from time to time, pass free of duty any baggage in actual use, and for this purpose may determine, subject to any such rules, whether any goods shall be treated as baggage in actual use or as goods subject to duty.

Reimported articles.

[2]**22.** If goods "exported" from the territories of His Highness the Maharaja Bahadur be imported into any place in them from any foreign country, such goods shall be liable to all duties, conditions and restrictions (if any) to which goods of the like kind and value not so exported are liable on the first importation thereof: Provided that, if such importation takes place within one year after the exportation of such goods, and it is proved to the satisfaction of the "Inspector" of Customs and Excise that the property in such goods has continued in the person by whom or on whose account they were exported, they may be admitted without payment of duty.

No exemption allowed except under orders of the Government.

[3]**23.** No exemptions from duty will be allowed except under [1][orders of the Government].

General procedure to be observed in passing exempted goods.

24. Except in the case of personal baggage or such imports by post as may be exempted from duty under the last preceding section, the imports of goods exempted or, in the case of exemptions under section 19, such officer as His Highness the Maharaja Bahadur, the Resident or the head of the department concerned may duly authorize, will advise the Inspector of Customs and Excise before import of the particulars of the goods to be exempted, and obtain from him an exemption certificate, under cover of which they will be allowed to be imported free of interference.

[1]Substituted by Act X of 1996.

[2]In Section 22 words "exported" substituted for "manufactured or made" and word "Inspector" substituted for "Superintendent" *vide* State Council Resolution No, 17 dated 6th June, 1905 published in Government Gazette dated 13th Bhadon 1962.

[3]In Section 23 word "other" after "no" deleted *vide* Notification published in Government Gazette dated 11th Baisakh 1988.

The exemption of personal baggage or postal parcels, will be covered by such rules as [1][the Government] may from time to time enact.

CHAPTER V.

General Provisions regarding Import & Export.

25. [1][The Government] may from time to time by notification in the "Jammu and Kashmir Government Gazette," prohibit or restrict the importation or exportation of goods or animals of any specified description, or the import or export of specified goods by specified routes, or the import or export of any goods [2][between sunset and sunrise] accross specified portions of the frontier of his territory.

Power to prohibit or restrict importation or exportation.

[3]*Explanation.*—Goods include any newspapers or book as defined in the Press and Publications Act.

[3]**25-A.** Any Customs Officer not below the rank of Assistant Inspector of Customs may detain any package, brought whether by land or air into the Jammu and Kashmir State which he suspects to contain;

Power to detain packages containing certain publications imported into Jammu and Kashmir State.

(a) any newspaper or book defined in the Press and Publications Act, No. 1 of 1989, or

(b) any document, containing any seditious matter, or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of His Highness the Maharaja Bahadur's subjects or which is deliberately and maliciously intended to outrage the religious feelings of any such class, by insulting the religion or the religious beliefs of that class that is to say, any matter, the publication of which is punishable under [4]Sections 103, 120-B and 215-A of the Ranbir Dand Bidhi, and shall forward such package to the nearest Magistrate of the first class.

(2) Any officer detaining a package under the provisions of sub-section (1), shall where practicable forthwith send by post to the addressee or consignee of such package a notice of the fact of such detention.

(3) The Minister of the State empowered to act under the Press and Publications Act No. 1 of 1989, shall cause the con-

[1]Substituted *vide* Act X of 1996.

[2]In Section 25 words "between sunrise and sunset" deleted at the end of the Section and inserted after the words "any goods" by Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

[3]Expalnation to Section 25 and Sections 25-A, 25-B and 25-C added *vide* Act, IV of 1989 published in Government Gazette dated 17th Baisakh 1989.

[4]Sections 121-130, 153-A and 295-A Ranbir Penal Code.

tents of such package to be examined, and if it appears to him that the package contains any such matter as is described in sub-section (1) may pass such orders as to the disposal of the package and its contents as he may deem proper, and if it does not so appear shall release the package and its contents unless the same be otherwise liable to seizure under any law for the time being in force:

Provided that any person interested in any package detained under the provisions of this section, may within two months from the date of such detention apply to the Minister of the State empowered under the Press and Publications Act No. 1 of 1989 for release of the same, and he shall consider such application and pass such orders thereon as he may deem proper.

Provided further that if such application is rejected, the applicant may within two months from the date of the order rejecting the application apply to the High Court for release of the package or its contents on the grounds that the package did not contain any such newspapers, book or other document containing any such matter as is described in sub-section (1).

(4) In this section "document" includes also any painting drawing or photograph or other visible representation.

Procedure for disposal by High Court of applications for release of packages so detained.

25-B. Every application under the second proviso to sub-section (3) of Section 25-A shall be heard and determined in the manner provided by Sections 99-D to 99-F of the Code of Criminal Procedure of 1989.

Jurisdiction barred.

25-C. No order passed or action taken under section 25-A shall be called in question in any court otherwise than in accordance with the second proviso to sub-section (3) of that section.

Power to grant drawback.

26. When any goods capable of being easily identified, which have been imported into the territories of His Highness the Maharaja Bahadur and upon which duties of customs have been paid on importation are re-exported, the Minister-in-Charge of the Customs Department may sanction, subject to any rules which may be prescribed by him in this behalf, the repayment of such portion as seems good to him, not exceeding seven-eighths in each case, of the duties paid on import as drawback: Provided that in every such case the goods be identified to the satisfaction of the Superintendent of Customs and Excise; that the re-export be made within two years from the date of importation, as shown by the records of the Customs-house and that the claim to drawback is made at the time of re-export.

[1]In case of such goods, however, imported by post or railway parcel or as personal luggage, as are re-exported within a month of their import the Inspector Customs and Excise if the duty on the goods does not exceed Rs. 100 and the Inspector General of Customs and Excise in all other cases may exempt the import from duty, provided that the opening of of the parcel at the time of import and the re-packing of it on re-export are effected in the presence of the Inspector Customs and Excise or in the case of his absence by a Deputy Inspector.

Provided also, that if any portion of the goods imported is consumed within the State no exemption on re-export shall be permitted unless and until the duty due on the portion consumed has been paid in full.

Cinematograph films imported temporarily as Railway or Postal Parcel or as personal luggage for use at the shows shall be liable to duty on the amount of hire paid for them if they are re-exported within one month of their import, provided that films of educative character *i.e.*, those explanatory of any method relating to science, art, craft or industry shall be exempt if they are imported as Railway or Postal Parcels or as personal luggage and returned within one month of their date of import.

Films, imported for more than a month, of either class will, however, be subjected to full amount of duty at the rate in force at the time of their import.

27. Notwithstanding anything hereinbefore contained, [2][the Government] may permit the establishment of public warehouses for the deposit of dutiable goods prior to payment of duty, subject to such rules regarding the conduct of such warehouses and the levy of duty on goods deposited in or removed therfrom as he may, from time to time, see fit to enact.

Power to establish ware houses.

28. [2][The Government] may also, from time to time, make rules governing—

Power to make rules.

(a) the levy of rent for goods detained or left through the owner's default at any Customs-house, warehouse, post or *mahal* ;

[1]Para two with proviso of Section 26 was substituted *vide* Notification published in Government Gazette dated 14th Magha 1972. Powers of Inspector to sanction exemption were raised from the duty value of Rs. 5 to Rs. 50 (*Vide* Notification published in Government Gazette dated 11th Bhadon 1988) and from Rs. 50 to Rs. 100 (*Vide* Notification No. 15 dated 3rd October, 1932, published in Government Gazette dated 28th Bhadon 1989) Inspector General of Customs and Excise is delegated powers to deal with all cases relating to refund of duty above Rs. 100 on goods re-exported from the State territory (*Vide* Notification No. 25, dated 26th June, 1930 published in Government Gazette dated 27th Har 1987). The following words have, therefore, been omitted from Para two "the Inspector General of Customs and Excise if the duty exceeds Rs. 5 but does not exceed Rs. 100". (Editor).

[2]Substituted for "His Highness the Maharaja Bahadur" *vide* Act X of 1996.

(b) the testing of spirit to ensure that it has been effectually and permanently rendered unfit for human consumption where such spirit is admitted at a special rate of duty; and

(c) generally to carry out the provisions of this Act.

CHAPTER VI.

OFFENCES AND PENALTIES.

Offences in respect of general imports.

29. Any person who—

(a) imports or exports goods which are liable to duty on import or export without payment of the same,

(b) gives a false invoice in regard to goods imported or exported,

(c) refuses to give an invoice or to produce documents or give information in his possession as required by section 9,

(d) imports or exports goods the import or export of which is prohibited under section 25,

(e) conceals any prohibited or dutiable goods in his baggage, or

(f) breaks any rule framed under this Act,

[1][(g) attempts or abets the commission of offences detailed in clauses (a), (d) and (e) or abets in clause (b)]

shall be liable to fine, which may amount to three times the duty on the goods, if any, in respect of which his offence has been committed, or five hundred rupees, whichever is greater, and the goods in respect of which his offence has been committed shall be liable to confiscation.

Offences in respect of bonded goods.

30. Any person who imports goods in bond, either from a port in British India to the territories of His Highness the Maharaja Bahadur of or from the frontier of the State to Srinagar, or who is carrying such goods in bond through the territories of His Highness the Maharaja Bahadur to Central Asia, and who breaks bulk of the goods before they reach their destination, or tampers with the seals or marks put upon them by the British or State Customs officials, as the case may be, shall be liable to a fine which may amount to five hundred rupees.

Obstruction of Customs and Excise Officers.

31. If any person intentionally obstructs any Customs and Excise Officer, or any other person duly employed in the prevention of smuggling, in the exercise of any powers given under this Act to

[1]Clause (g) added *vide* Chief Minister's letter No. 7682/P. 3. 17, dated 29th January 1917 published in Government Gazette dated 26th Mar 1974.

any such officer or person, he shall be liable to imprisonment not exceeding six months, or to fine not exceeding one thousand rupees, or to both.

Connivance at fraud or breach of duty by Customs and Excise Officer.

32. If any Customs and Excise Officer, or other person duly employed for the prevention of smuggling practises or attempts to practise any fraud for the purpose of injuring the Customs revenue or abets or connives at any such fraud or any attempt to practise any such fraud, or if any such officer or person is guilty of a wilful breach of the conditions of this Act, he shall be liable to imprisonment for any term not exceeding two years, or to fine not exceeding one thousand rupees, or to both.

This punishment shall be in addition to any departmental punishment, such as, dismissal from service or confiscation of security which the Inspector General of Customs and Excise may order. Appeal against such orders of departmental punishment shall lie to the Minister-in-charge whose orders shall be final.

Search on insufficient grounds or disclosure of particulars learnt officially by Customs and Excise Officers.

33. If any Customs and Excise Officer, or other person duly employed as such, requires any person or premises to be searched for dutiable or prohibited goods, or requires any person to be detained without having reasonable ground to believe that there are dutiable or prohibited goods concealed about such person or premises, and if any such officer or person, except in the discharge of his duty in good faith, discloses any particulars learnt by him in his official capacity, or if any Customs and Excise Officer, except as permitted by the Act, parts with the possession of any samples delivered to him in his official capacity, such officer or person shall be liable to a penalty not exceeding five hundred rupees.

Offences not otherwise provided for.

34. Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act and not otherwise provided for in this Act, shall be liable to be punished for each such wilful act or omission with fine which may extend to two hundred rupees.

Offences by whom punishable.

35. The offences described in section 29 and 30 shall be punishable by the Inspector of Customs and Excise, and those described in section 31, 32, 33 and 34 by the Magistrate of the first class within whose jurisdiction, respectively, they are committed:

Provided that when the offenders are European British subjects, or are liable under the provisions of the Commercial

Treaty of the 2nd May, 1870, between the British Government and His Highness the Maharaja Bahadur of Jammu and Kashmir Government, to the jurisdiction of the Joint Commissioners appointed thereunder, the Customs and Excise Officers of the State shall not exercise their power under the Act but shall make a report on the offence committed to the Resident in Kashmir, or to the Joint Commissioner, as the case may be, for disposal.

Procedure in enquiries by Inspectors of Customs and Excise.

36. In the conduct of all enquiries held into offences under this Chapter, Inspectors of Customs and Excise shall be guided, so far as is practicable, by the provisions of the law governing the Criminal Procedure of the Government, and all decisions given and sentences imposed by them shall be appealable to the Inspector General of Customs and Excise [1][an appeal against whose orders shall lie to [2]"the Government".]

CHAPTER VII.

PROCEDURE RELATING TO OFFENCES.

Power to search on reasonable suspicion.

37. Any Customs and Excise Officer duly employed in the prevention of smuggling may search any person who is crossing the frontier of His Highness the Maharaja Bahadur's territory, or who has recently crossed it:

Provided that such officer has reason to believe that such person has dutiable or prohibited goods secreted about his person:

Provided, also, that a female shall not be searched by any but a female.

Power to stop carts, etc., and search for goods on reasonable suspicion.

38. Any duly empowered Customs and Excise Officer, or other person duly employed for the prevention of smuggling may stop and search for smuggled goods any cart or pack animal or other means of conveyance: Provided that he has reason to believe that smuggled goods are carried thereby.

Powers to issue search warrants.

39. Any Inspector of Customs and Excise may, on application by a Customs and Excise Officer stating his belief that smuggled or prohibited goods are secreted in any place within the local limits of his jurisdiction, issue a warrant to search for such goods. Such warrant shall be executed in the same way and shall

[1]In Section 36 words in [ ] added *vide* order published in Government Gazette dated 18th Sawan 1961.

[2]In Section 36 "Government" substituted for "Minister-in-charge" and last sentence was deleted by Act X of 1996.

have the same effect as a search warrant issued under the law relating to Criminal Procedure.

Persons reasonably suspected may be arrested.

40. Any person against whom a reasonable suspicion exists that he has been guilty of an offence under this Act may be arrested by any Customs and Excise Officer, or other person duly employed for the prevention of smuggling.

Persons arrested to be taken to nearest Magistrate or Inspector of Customs and Excise.

41. Every person arrested on the ground that he has been guilty of an offence under this Act, shall forthwith be taken before the nearest Magistrate or Inspector of Customs and Excise.

Persons taken before Magistrates or Inspectors of Customs and Excise may be detained or admitted to bail.

42. When any such person is taken before a Magistrate or Inspector of Customs and Excise, he shall be released on giving security to the satisfaction of the officer before whom he is taken to appear at such time and place as such officer may appoint.

Persons escaping may be afterwards arrested.

43. If any person liable to be arrested under this Act, is not arrested at the time of committing the offence for which he is so liable, or after arrest makes his escape, he may at any time afterwards be arrested and taken before a Magistrate or Inspector of Customs and Excise to be dealt with as if he had been arrested at the time of committing such offence.

Seizure of things liable to confiscation.

44. Anything liable to confiscation under this Act may be seized by any Customs and Excise Officer or other person duly employed for the prevention of smuggling.

Things seized how to be dealt with.

45. All things seized on the ground that they are liable to confiscation under this Act shall, as soon as conveniently may be, be deposited in such custody as the Inspector General of Customs and Excise may, from time to time, appoint for the purpose.

Option to pay fine in lieu of confiscation.

46. Whenever confiscation is authorized by this Act the officer adjudging it shall give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Should the owner fail to exercise such option, the property in the goods will vest in His Highness the Maharaja Bahadur.

Goods on which penalty is incurred not to be removed till payment.

47. When any fine, penalty or increased rate of duty is leviable under this Act, the goods in respect of which such fine, penalty or rate is leviable shall not be removed by the owner until such fine, penalty or rate is paid.

Other goods of persons liable to fine or penalty may be detained.

If any person has become liable to any such fine, penalty or rate in respect of any goods, the Inspector of Customs and Excise may detain any other goods belonging to such person passing any Customs post until such fine, penalty or rate is paid.

Enforcement of payment of penalty.

48. When a penalty or increased rate of duty is adjudged against any person under this Act by any Customs and Excise Officer, such officer if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge or in the charge of any Custom and Excise Officer. When a Customs and Excise Officer who has adjudged a penalty or increased rate of duty against any person under this Act is unable to realize the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the said person and the amount of penalty or increased rate of duty unrecovered, and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been a fine inflicted by himself.

Deposit pending appeal of duty demanded.

49. Where any appeal is laid in respect of any duty or penalty adjudged under this Act, the owner shall, pending the appeal, deposit in the hands of the Inspector of Customs and Excise for the province in which the dispute arises the amount adjudged by the order appealed against.

When delivery of any goods is withheld merely by reason of such amount not having been paid, the Inspector of Customs and Excise shall, upon such deposit being made, cause such goods to be delivered to the owner.

If upon any such appeal it is decided that the whole or any portion of such amount was not leviable in respect of such goods, the Inspector of Customs and Excise shall return such amount or portion, as the case may be, to the owner of such goods on demand by such owner.

Penalty under Act not to interfere with punishment under other law.

50. The award of any confiscation, penalty or increased rate of duty under this Act shall not prevent the infliction of any punishment to which the person affected thereby is liable under any other law.

CHAPTER VIII.

MISCELLANEOUS.

All person in Government service bound to report offences against the Act.

51. Every officer employed by the Government and every village headman or chaukidar shall be bound to give immediate information to a Customs and Excise Officer of all breaches of any of the provisions of this Act which may come to his knowledge; and all such officers and all village headmen and chaukidars shall be bound to take all reasonable measures in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

Power to frame rules for grant of rewards for detection of offence.

52. [1][The Government] may frame rules for the grant of rewards by the Inspector General of Customs and Excise to Customs and Excise Officers or other persons who have been instrumental to the detection or punishment of offences against this Act.

No compensation for loss or injury except on proof of neglect or wilful act.

53. No owner of goods shall be entitled to claim from any Customs and Excise Officer compensation for any loss or damage occurring to such goods at any time while they remain or are lawfully detained at any custom-house, post or mahal or under charge of any Customs and Excise Officer, unless it be proved that such loss or damage was occasioned by the neglect or wilful act of such Customs and Excise Officer.

Notice of proceeding.

54. No suit or proceeding shall be commenced against any person for any thing purporting to be done in pursuance of this Act, except after a month's previous notice in writing of the intended proceeding and of the cause thereof has been given to such person,

Limitation.

nor after the expiration of three months from the accrual of such cause.

Agent to produce authority, if required.

55. When any person applies to any Customs and Excise Officer for permission to transact any business with him on behalf of any other person such officer may require the applicant to produce a written authority from the person on whose behalf such business is to be transacted, and in default of production of such authority may refuse such permission.

The clerk, servant or agent of any person or mercantile firm may transact business generally at the custom-house on

[1]Substituted by Act X of 1996.

behalf of such person or firm, provided that the Inspector of Customs and Excise may refuse to recognize such clerk, servant or agent unless such person or a member of such firm identify such clerk, servant or agent to the Inspector of Customs and Excise as empowered to transact such business, and deposit with the Inspector of Customs and Excise an authority, in writing duly signed, authorizing such clerk, servant or agent to transact such business on behalf of such person or firm.

Rules to be notified.

59. All rules made under this Act shall be notified in the "Jammu and Kashmir Government Gazette", and shall thereupon have the force of law. And any notification made by any authority under powers conferred by this Act may be concelled in like manner by the same authority.

THE EXCISE ACT, 1958.

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THE JAMMU AND KASHMIR EXCISE ACT, 1958.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 9, dated 4th December 1901.)

An Act to consolidate and amend the Excise Law of the Jammu and Kashmir Government.

WHEREAS it is expedient to consolidate and amend the law relating to the import, export, transport, manufacture, sale and possession of intoxicating [1]liquor and intoxicating

[1]The word or words "opium," "opium or" and "opium and", according as it may be grammatically appropriate in each case shall be deleted in the preamble and wherever they occur in the following sections and sub-sections, namely:—

3 (1), 3 (14), 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 25, 26, 28, 30, 35, 47, 49, 50, 57 and 58 but the word "opium" where it first occurs in the proviso of section 11 shall not be deleted. *Vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

drugs in the Jammu and Kashmir Government; it is enacted as follows:—

I.—PRELIMINARY AND DEFINITIONS.

Short title.

1. This Act may be cited as "The Jammu and Kashmir Excise Act, 1958".

Extent.

It extends to the whole of the territories of His Highness the Maharaja Bahadur of Jammu and Kashmir Government; and

Commencement.

It shall come into force in any local area within the said territories to such extent and from such date as [1][the Government] by notification, shall direct.

Repeal of enactments, rules and Regulations.

2. From the date on which this Act comes into force in any local area, the enactments, rules and Regulations governing the Excise revenue at present in force shall be repealed;

Provided that all licences granted under any of the said enactments, rules and Regulations in force on the date on which this Act comes into force in any local area, shall continue in force for the periods for which the same have been respectively granted, subject to the provisions of the enactments, rules and Regulations under which such licences were granted:

Provided, further, that the said repeal shall not affect any act done or any offence committed, or any proceeding commenced, or any claim which has arisen, or any penalty which has been incurred before this Act comes into force.

Interpretation.

3. In this Act, unless there be something repugnant in the subject or context,—

"Excise revenue."

(1) "Excise revenue" means revenue derived or derivable from any duty, fee, tax, fine or confiscation imposed or ordered under the provisions of this Act or of any other law for the time being in force relating to liquor or intoxicating drugs.

"Customs and Excise Officer".

(2) "Customs ane Excise Officer" means the Inspector General of Customs and Excise or Inspector of Customs and Excise or any officer above the rank of Chaprasi, or other person lawfully appointed or invested with powers under the Jammu and Kashmir Customs Act of 1958.

[1]In Sections 1 (para third), 3 (sub-sections 7 and 9), 4, 5 (proviso), 7, 8, 10 (d), 11, 12, 13, 15, 16, 17 (e), 18, 20 (d), 25, 63 (b), 63 (c), 63 (d) and 64 for the words "His Highness the Maharaja Bahadur" the words "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(3) "Spirits" means any liquor containing alcohol and obtained by distillation. "Spirits".

(4) "Liquor" includes spirits of wine, methylated spirits, spirits, wine, beer and all liquid consisting of or containing alcohol. "Liqour.".

(5) "Beer" includes ale, stout, porter, cider and all other fermented liquors usually made from malt. "Beer".

(6) "Country liquor" means liquor, whether manufactured in the State or not, on which duty of Excise has not been levied, and is not leviable under this Act at the full rates of duty chargeable under the Customs Tariff. "Country liquors"

(7) "Foreign liquor" includes all liquors except country liquor: "Foreign liquors".

Provided, that in any case in which doubt may arise, the [1][Government] may declare by notification what, for the purposes of this Act, shall be deemed to be "country liquor" and what "foreign liquor".

[2](8) [(*a*) "Raw Opium" means the spontaneous coagulated juice obtained from the capsules of the papaver somniferum, which has only been submitted to the necessary manipulations for packing and transport and also includes poppy heads.

"Poppy heads" means capsules of the poppy plant from which the juice has not been completely extracted.

(b) "Prepared Opium" means the product of raw opium, obtained by a series of special operations such as dissolving, boiling, roasting and fermentation designed to transform it into an extract suitable for smoking and includes *madak* and *chandu* and also dross and all other residues remaining when opium has been smoked.

(c) "Medicinal Opium" means raw opium which has been heated to 60 centigrade and contains not less than 10 per cent. of morphine, whether or not it be powdered or granulated or mixed with indifferent materials and includes preparations and derivatives of the foregoing not being morphine or heroine.

(d) "Morphine" means the principal alkaloid of opium, having the chemical formula $C_{17} H_{19} No_3$ and includes

(i) all new derivatives of morphine or of its salts and every alkaloid or opium which may be shown by

[1]See footnote under section 1.

[2]Sub-section (8) substituted *vide* Notification No. 14 published in Goverment Gazette dated 17th Phagan 1983.

scientific research, generally recognised, to be liable to similar abuse and productive of like ill-effects;

(ii) all preparations (official or non-official including the so-called anti-opium remedies) containing morphine or such derivatives or alkaloids as above.

(e) "Heroine" means diactyl-morphine having the chemical formula $C_{21} H_{23} No_5$ and includes its salts and all preparations containing heroine.

(f) "Cocaine" means the principal alkaloid of Erythroxylon Coca having the chemical formula $C_{17} H_{21} No_4$ and includes

(i) all parts of the Coca plant,

(ii) all new derivatives of cocaine or of its salts which may be shown by scientific research, generally recognised to be liable to similar abuse and productive of like ill-effects;

(iii) eucaine and every other preparation, synthetic or otherwise, which has a physiological effect similar to that of cocaine or which is declared by the Government to be included in the meaning of the term cocaine;

(iv) all preparations (official or non-official including the so-called anti-opium remedies) containing cocaine or eucaine or such derivatives, salts or preparations as above.

(g) "Admixture of Opium" means preparations, admixtures or derivatives of raw opium not being prepared opium, medicinal opium, morphine or heroine.

(h) "Excise opium" is raw opium (excluding poppy heads) issued by the Excise Department to its licensees.

(i) "Opium" includes raw opium, excise opium and admixtures of opium.]

[1](9) ["Intoxicating drug" includes *charas*, *ganja*, *bhang* and every other preparation and admixture of the same, and every intoxicating drink or substance prepared from any part of the hemp plant, from grain or from other material, not included in the term "liquor". It also includes opium, prepared opium, medicinal opium, morphine, heroine and cocaine and every drug or article which [2][the Government] may, by notification in the Government Gazette, declare to be included in this definition and every preparation and admixture of any such drug or article.

"Intoxicating drug".

[1]Sub-section (9) as amended by amending Regulation of 1970 substituted *vide* Notificatoin No. 14 published in Government Gazette dated 17th Phagan 1983.

[2]See footnote under section 1.

"Dangerous drug" includes medicinal opium, morphine, heroine and cocaine.

(10) "Sale or selling" includes any transfer otherwise than by way of gift.

"Sale or selling".

[1][(10-A) Liquor and intoxicating drugs other than prepared opium and dangerous drugs shall be deemed to be sold "by retail" when sold in quantities not exceeding the quantity (if any) fixed in respect of the same by rules made under this Act as the largest which may be possessed by one person, at one time, without a licence, permit or pass; and "by wholesale" when sold in quantities larger than the above.]

(11) "Import" means to bring into the State territory from British India or foreign territory.

"Import."

(12) "Export" means to take out of the State territory to British India or foreign territory.

"Export."

(13) "Transport" means to move from one place to another within the State territory.

"Transport.

(14) "Manufacture" includes every process, whether natural or artificial by which any fermented, spirituous or intoxicating liquor, or intoxicating drug is produced or prepared, and also redistillation and every process for the rectification of liquor.

"Manufacture."

(15) "Rectification" includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith.

"Rectification."

(16) "Magistrate" means any Magistrate exercising powers not less than those of a Magistrate of the 1st class or any Magistrate of the 2nd class specially authorized in this behalf by the High Court of the State.

"Magistrate."

[2][(17) "Imprisonment" includes both simple and rigorous.]

"Imprisonment."

II.—ESTABLISHMENT AND CONTROL.

4. The provisions of the Jammu and Kashmir Customs Act of 1958 in regard to the appointment, removal or punishment of officers appointed for the collection and control of the

[1]Sub-section (10-A) inserted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

[2]Clause (17) added *vide* Council Resolution dated 27th November, 1903 published in Government Gazette dated 18th Phagan 1960.

Customs and Excise revenue and for the delegation of powers and framing of rules in this respect by [1][the Government] and the [2][Inspector General] of Customs and Excise, respectively, shall apply *mutatis mutandis*, to this Act.

III.—IMPORT, EXPORT AND TRANSPORT.

Import of liquor or intoxicating drug.

5. No liquor or intoxicating drug shall be imported unless, being liable to the payment of duty under the Jammu and Kashmir Customs Act of 1958, or any other law for the time being in force relating to the duties of customs on goods imported into the Jammu and Kashmir State, it has been dealt with according to such law:

Provided that [1][the Government] may exempt any imports of liquor, opium or intoxicating drugs made on State account from import duties with a view to their taxation under this Act.

Export of liquor or intoxicating drug.

6. No liquor or intoxicating drug shall be exported unless it has been lawfully imported or manufactured in the State, and its export is permitted by competent authority on payment of the fee or duty, if any, to which it is liable under any law for the time being in force.

[3][Every package of opium intended for export and containing more than five seers of raw opium shall before export be conspicuously and indelibly marked with the word "Opium" and with the net weight of raw opium contained in it, expressed in maunds and seers.

Transport of liquor, opium or intoxicating drug may be prohibited.

7. [1][The Government] may from time to time, by notification in the Government Gazette, prohibit the transport of liquo , or intoxicating drugs from any local area into any other local area.

And must be covered by a permit.

8. No liquor or intoxicating drug exceeding such quantity as [1][the Government] may from time to time prescribe by notification, either generally for the whole State or for any local area, shall be transported, excep it be accompanied by a permit issued under the provisions of the nex following section:

Provided that in the case of foreign liquor transported for *bona fide* private consumption or for sale at any place

[1]See footnote under section 1.

[2]"Inspector General" substituted for "Superintendent" wherever it occurs *vide* notification published in Government Gazette dated 10th Sawan 1986.

[3]Para to section 6, added *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

at which the sale of such liquor is duly licensed or permitted under the provisions of this Act, such permits shall be dispensed with, unless [1][the Government] shall by notification otherwise direct with respect to any local area.

Permits for transport.

9. Permits for the transport of liquor or intoxicating drugs may be issued by the Inspector General of Customs and Excise or by any person duly empowered in that behalf by him.

General and special permit.

Such permits shall be either general for definite periods and kinds of liquor or intoxicating drugs, or special for specified occasions and particular consignments only.

Particulars to be given in permits.

10. Each permit shall specify:—

(a) the name of the person authorized to tran port liquor or intoxicating drugs,

(b) the period for which the permit is to be in force,

(c) the quantity and description of liquor or intoxicating drugs for which it is granted,

(d) any other particulars which [1][the Government] may prescribe.

General permits shall be granted only to persons licensed under this Act and shall cover any quantity of liquor or intoxicating drugs transported at any one time within the quantity specified in the permit.

Permits shall extend to and include servants and other persons employed by the grantees and acting in their behalf.

IV.—MANUFACTURE, POSSESSION AND SALE.

Manufacture of liquor, or intoxicating drug prohibited except under the provision of this Act.

11. No liquor, or intoxicating drug shall be manufactured;

no hemp [2][or coca] or poppy plant shall be cultivated; [2][nor shall the spontaneous growth of the hemp plant be collected;]

no distillery, or brewery, or other place for the manufacture of liquor of any kind shall be constructed or worked; and

no person shall use, keep or have in his possession any material, still, utensil, implement or apparatus whatsoever for the purpose of manufacturing any liquor, or intoxicating drug except under the authority and subject to the terms and conditions of a licence granted by the Inspector General of Customs and Excise in that behalf:

[1]See footnote under section 1.

[2]Words in brackets in section 11 inserted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

Provided that [1][the Government] may by notification direct that in any local area it shall not be necesary to take out a licence for the manufacture of liquor for *bona fide* home consumption or for the growth of the poppy or hemp plant or the the manufacture of opium for sale to vendors licensed for the sale, manufacture or export of intoxicating drugs:

Provided also that it shall be competent to [1][the Government] at any time to restrict or prohibit the manufacture, possession or sale of any kind of liquor or intoxicating drugs in any local area of the territories of the Jammu and Kashmir Government.

[2]**12.** [No person shall possess any quantity of liquor or of any intoxicating drug in excess of such quantity (if any) as the [1][Government] may from time to time prescribe by notification unless he is licensed by the Inspector General of Customs and Excise to collect, cultivate, manufacture or sell the same or holds a pass from the Inspector General of Customs and Excise in that behalf.]

Establishment of public distilleries and warehouses.

13. The Inspector General of the Customs and Excise may, with the previous sanction of [1][the Government,]

(a) establish a public distillery in which liquor or any kind of liquor may be manufactured on such conditions as [1][the Government] deems fit to impose;

(b) discontinue any public distillery so established;

(c) establish a public warehouse wherein liquor and intoxicating drugs may be deposited and kept without payment of duty; and

(d) discontinue any public warehouse so established.

Sale of liquor or intoxicating drug without licence prohibited.

[3]**14.** No liquor or intoxicating drugs shall be sold without a licence from the Inspector General of Customs and Excise: Provided that a cultivator or owner of any hemp plant may sell without a licence those portions of the plant from which the intoxicating drug is manufactured or produced to any person licensed under this Act to sell, manufacture or export intoxicating drugs.

Exclusive privileges of manufacture, etc. may be granted.

15. It shall be lawful for [1][the Government] to grant to any person or persons, on such conditions and for such period as may seem fit, the exclusive or other privilege,

[1]See footnote under section 1.

[2]Section 12 as amended by Amending Regulation of 1970 substituted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

[3]In section 14 words "or poppy" omitted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

(1) of manufacturing or supplying by wholesale, or
(2) of selling by retail, or
(3) of manufacturing or supplying by wholesale and selling by retail any country liquor or intoxicating drug within any local area.

No grantee of any privilege under this section shall exercise the same until he has received a licence in that behalf from the Inspector General of Customs and Excise.

V.—DUTIES.

16. A duty shall, if [1][the Government] so direct, be levied on all liquor and intoxicating drugs manufactured in the territories of His Highness the Maharaja Bahadur or imported into the same on State account, of such amount as the Government may from time to time prescribe:

Duty on liquor or intoxicating drugs.

Provided that it shall be lawful for [1][the Government] to exempt any liquor or intoxicating drug from any duty to which the same may be liable under any of the provisions of this Act.

17. Such duty may be levied in one or more of the following ways:—

How duty may be imposed.

(a) by duty of Excise to be charged, in the case of spirits or beer, either on the quantity produced in the distillery or brewery or passed out of the distillery, brewery or warehouse, as the case may be;

(b) in the case of intoxicating drugs, by a duty to be rateably charged on the quantity produced or manufactured or passed out of the warehouse or on the acreage cultivated;

(c) by payment of a sum in consideration of the grant of any exclusive or other privilege—

(1) of manufacturing or supplying by wholesale, or
(2) of selling by retail, or
(3) of manufacturing or supplying by wholesale, and selling by retail any country liquor or intoxicating drug in any local area and for any specified period of time;

(d) by fees on licences for manufacture or sale;

(e) by transport duties assessed in such manner as [1][the Government] may direct.

18. All or any of the duties leviable under this Act in any local area may, with the sanction of [1][the Government], be farmed subjec to such payment and on such other conditions as [1][the Gov-

Duties may be farmed.

[1]See foot noteunder section 1.

ernment] shall prescribe. Farmers of duties under this section shall take out licences as such from the Inspector General of Customs and Excise.

Farmer may let or assign.

19. In the absence of any contract or condition to the contrary, any grantee of any exclusive or other privilege may let or assign the whole or any portion of the privilege or farm. But no such lessee or assignee shall exercise any rights as such unless and until the grantee or farmer, as the case may be, shall have applied to the Inspector General of Customs and Excise for a licence to be given to such lessee or assignee, and such lessee or assignee shall have recieved the same.

VI.—LICENCES, ETC.

Forms and conditions of licences, etc.

20. Every licence or permit granted under this Act shall be granted—

(a) on payment of such fees (if any),

(b) for such period,

(c) subject to such restrictions and on such conditions, and

(d) shall be in such form and contain such particulars as [1][the Government] may direct, either generally or in any particular instance, in this behalf.

Counterpart agreements to be executed by licensees.

21. Every person taking out a licence under this Act may be required to execute a counterpart agreement in conformity with the tenor of his licence and to give such security for the performance of his agreement as the Inspector General of Customs and Excise may require.

Power to recall licences.

22. The Inspector General of Customs and Excise may cancel or suspend any licence or permit granted under this Act—

(a) if any fee or duty payable by the holder thereof be not duly paid; or

(b) in the event of any breach by the holder of such licence or permit, or by his servants, or by any one acting with his express or implied permission on his behalf, of any of the the terms or conditions of such licence or permit; or

(c) if the holder thereof is convicted of any offence against this Act or any other law for the time being in force relating to the Excise revenue, or of any cognizable or non-bailable offence; or

[1]See footnote under section 1.

(d) where a licence or permit has been granted on the application of the holder of an exclusive or other privilage, or of a farmer of duties under this Act, on the requisition in writing of such person; or

(e) if the conditions of the licence or permit provide for such cancelment or suspension at will.

VII.—General Provisions.

23. Every person who manufactures liquor or sells country liquor under a licence granted under this Act shall be bound—

Certian licensees required to keep instruments for testing etc.

(a) to supply himself with such of the prescribed instruments for testing the strength of such liquor as the Inspector General of Customs and Excise Revenue may direct and to keep the same in good condition, and,

(b) on the requisition of any officer of the Customs and Excise Department duly empowered in that behalf, at any time to measure out or to test the strength of any such liquor in his possession in such manner as the said officer may require.

24. All duties, taxes, fines and fees payable to the State direct under any of the foregoing provisions of this Act or of any licence or permit issued under it, and all amounts due to the State by any grantee of a privilege, or by any farmer under this Act, or by any person on account of any contract relating to the Excise revenue, may be recovered from the person primarily liable to pay the same or from his surety (if any), as if they were arrears of land revenue, and, in case of default made by a grantee of a privilege or by a farmer, the Inspector General of Customs and Excise [1][with the approval of the Government] may take the grant or farm under management at the risk of the defaulter, or may declare the grant or farm forfeited and resell it at the risk and loss of the defaulter. When a grant or farm is under management under this section, the Inspector General of Customs and Excise may recover any monies due to the defaulter by any lessee or assignee as if they were arrears of land revenue.

Recovery of duties, etc.

25. [2][The Government] may from time to time frame rules—

Powers to frame rules.

[1]Words in brackets inserted in section 24 *vide* Notification No. 15 dated 14th December 1922 published in Government Gazette dated 11th Poh 1979, but in these words "Government" substituted for "Minister-in-charge" by Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.

[2]See footnote under section 1.

(a) for determining the number of licences of each description to be granted in any district or place;

(b) for regulating the number, size and description of stills, utensils, implements and apparatus to be used in any distillery;

(c) prescribing the instruments to be used in the testing of liquor and the tables of corrections according to temperature to be used therewith;

(d) prescribing the measures to be used for the sale of country liquor;

(e) fixing for any local area the [1]"maximum or" minimum price [1][above or] below which any country liquor shall not be sold;

(f) for the warehousing of liquor and intoxicating drugs and for the removal of the same from any warehouse in which they are deposited for deposit in any other warehouse or for local consumption or for export;

(g) for the inspection and supervision of stills, distilleries, private warehouses and breweries;

(h) for the management of any public distillery or public warehouse established under section 13;

(i) for placing the growth of the poppy or hemp plant and the preparation of intoxicating drugs and the storage, import, export, possession or transport of liquor or intoxicating drugs under such supervision and control as may be deemed necessary for the purpose of this Act;

(j) prohibiting the use of any article which [2][the Government] shall deem to be noxious or otherwise objectionable in the manufacture of liquor or any intoxicating drugs;

(k) for the grant of *batta* to witnesses summoned before Magistrate or Inspector of Customs and Excise under this Act;

(l) regulating the powers of the officers of the Customs and Excise Department to summon witnesses;

(m) for the disposal of the articles confiscated and of the proceeds thereof;

(n) for the grant of rewards to Customs and Excise Officers and other persons who have assisted in the detection or conviction of offences against this Act;

(o) generally to carry out the provisions of this Act or of any other law for the time being in force and relating to the Excise revenue.

[1]Words in brackets inserted *vide* order published in Government Gazette dated 10th Jeth 1978.

[2]See footnote under section 1.

VIII.—Powers and Duties of Officers, etc.

Magistrate or Inspector of Customs and Excise may issue a search warrant on application.

26. If any Magistrate or Inspector of Customs and Excise, upon information given by an officer of the Customs and Excise Department, or by a Police Officer or other person, and after such inquiry as he thinks necessary, has reason to believe that an offence under this Act has been committed and that the issue of a warrant is necessary to assist in its detection, he may issue a warrant for the search for any liquor, or intoxicating drug, materials, still, utensil, implement or apparatus in respect of which the alleged offence has been committed.

Powers to certain officers to search houses, etc., without warrant.

27. When the Wazir Wazarat of any district to which this Act applies, or any officer of the Customs and Excise Department not below the rank of Assistant Inspector, has reason to believe that an offence under this Act has been committed, and that if steps are taken to obtain a search warrant under the last preceding section, it is likely to go undetected, he may, after recording his reasons and the grounds of his belief, at any time by day or night, enter and search any place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of any offence under this Act.

Power to enter and inspect places of manufacture and sale.

28. [1][Any officer of the Revenue Department of rank not lower than that of a Tehsildar] or any officer of the Customs and Excise Department not below the rank of Assistant Inspector, may enter and inspect, at any time by day or by night, any place in which any licensed manufacturer carries on the manufacture of any liquor or intoxicating drugs or stores any liquor or intoxicating drug; and may enter and inspect, at any time during which the same may be open, any place in which any liquor or intoxicating drug is kept for sale by any licensed person, and may examine, test, measure or weigh any materials, stills, utensils, implements, apparatus, liquor or intoxicating drug found in such place.

In case of resistance, entry may be made by force, etc.

29. If any officer empowered to make any entry under the provisions of the last two preceding sections cannot otherwise make such entry, it shall be awful for him to break open any outer or inner door or window and to remove any other obstacle to his entry into any such place.

[1]Words in brackets in section 28 substituted for "the Wazir Wazarat of any district" *vide* Notification published in Govennment Gazette dated 26th Phagan 1976.

Offenders may be arrested, and contraband liquor and articles seized, without warrant.

[1]**30.** Any Customs and Excise Officer, any Police Officer not below the rank of Sub-Inspector and any other person duly empowered by the Government in this behalf may arrest without warrant any person found committing an offence punishable under section 48 or section 50 and may seize and detain any liquor, drug or other article which he has reason to believe to be liable to confiscation under this Act or any other such law and may detain and search any pe son upon whom, and any vessel, raft, boat, vehicle, animal, package, receptacle or covering in or upon which, he may have reasonable cause to suspect any such liquor or drug or other such article to be or to be concealed.

Arrest of persons refusing to give name or giving false name.

31. Any person who may be accused or reasonably suspected of committing an offence under this Act, and who on demand of Cus oms and Excise Officer or of any other person duly empowered, refuses to give his name or residence, or who gives a name or residence which such officer or person ha reason to believe to be false, may be arrested by such officer or person in order that his name and residence may be ascertained.

Searches how to be made.

32. All searches under the provisions of this Act shall be made in accordance with the provisions of the law relating to Criminal Procedure for the time being in force in the State.

Officers of Police and Revenue Departments and all village headmen and Chaukidars bound to assist.

33. All officers of the Police and Revenue Departments and all village headmen and Chaukidars shall be legally bound to assist any Customs and Excise Officer in carrying out the provisions of this Act.

All officers in State employ required to report offences against this Act.

34. Every officer employed by the State, other than a Customs and Excise Officer, shall be bound to give immediate information to a Customs and Excise Officer, and every Customs and Excise Officer shall be bound to give immediate information either to his immediate official superior or to an Inspector of Customs and Excise of all breaches of any of the provisions of this Act which may come to his knowledge; and all such officers shall be bound to take all reasonable measure in their power to prevent the commission of any such breaches which they may know or have reason to believe are about or likely to be committed.

Land-holders and others to give information.

35. All zamindars, proprietors, tenants, under-tenants and cultivators who own or hold land on which there shall be manufacture of liquor, growth of the poppy or hemp plant or manufacture oi intoxi-

[1]Section 30 substituted *vide* Act No. VIII of 1997 published in the Government Gazette dated 29th Har 1997.

cating drugs not licensed under this Act or in accordance with its conditions shall, in the absence of reasonable excuse, be bound to give notice of the same to a Magistrate or to a Customs and Excise Officer immediately the same shall have come to their knowledge.

Persons arrested how to be dealt with.

36. (1) When any person is arrested under the provisions of this Act, the person arresting him shall, if he is able to furnish security, admit him to bail to appear before the nearest Inspector of Customs and Excise, or, if he is unable to furnish security, forward him in custody to the Magistrate or Officer in charge of a Police Station, whichever be the nearest within the local limits of whose jurisdiction the offence with which he is charg d, is suspected to have been committed.

(2) On any such person being brought to the Magistrate or Officer in charge of a Police Station as aforesaid, such Magistrate or Officer in charge of a Police Station shall admit him to bail to appear, when summoned, before the nearest Inspector of Customs and Excise, or in default of bail shall forward him in custody to such Inspector.

(3) On any such person being brought in custody before such Inspector of Customs and Excise as aforesaid or appearing before him on bail, such Inspector shall hold such enquiry as he may think necessary and shall either release such person or forward him in custody or admit him to bail to appear before the Magistrate having jurisdiction to try the case.

Persons arrested may be released on bail.

37. It shall be the duty of any officer arresting any person under the powers given by this Act, and of any Magistrate or Officer in charge of a Police Station before whom a person arrested is brought or appears under the provisions of section 36 of this Act, to release such person on bail, if sufficient bail be tendered for his appearance before an Inspector of Customs and Excise or before a Magistrate.

Bond to be executed before releasing on bail.

38. Before any person is released on bail, a bond in such sufficient but not excessive sum of money as the officer admitting him to bail thinks proper, shall be executed by such person and by one or more sureties, conditioned that such person shall attend in accordance with the terms of the bond and shall continue to attend until otherwise directed by the Inspector of Customs and Excise before whom he was bailed to attend or by the Magistrate, as the case may be:

Provided that the officer admitting any such person to bail may, at his discretion, dispense with the requirement of of a surety or sureties to the bond executed by such person.

Inspector of Customs and Excise may summon witness.

39. Any Inspector of Customs and Excise holding an enquiry in the manner provided in section 36 may summon any person to appear before himself to give evidence on such enquiry or to produce any document relevant thereto which may be in his possession or under his control.

Procedure in taking evidence.

40. Persons so summoned shall attend as required, and shall be bound to answer truly, all questions relating to such enquiry put to them by such Inspector. Such answers shall be reduced into writing, and shall, after being read over to the person making the same and admitted by him to be correct, be signed by such Inspector.

Procedure to be followed in case the witness is unable to appear before an Inspector of Customs and Excise.

41. It shall be lawful for an Inspector of Customs and Excise, instead of summoning to appear before him any person who from sickness or other infirmity may be unable to do so, or whom by reason of rank or sex it may not be proper to summon, to proceed to the residence of such person and there to require him to answer such questions as he may consider necessary with respect to such enquiry; and such person shall be bound to answer truly all such questions put to him, and the provisions of section 40 shall apply to such answer.

Inspectors of Customs and Excise may summon persons suspected of offences against Excise law.

42. An Inspector of Customs and Excise may, after recording his reasons in writing, summon any persons to appear before him whom he has good reason to suspect of having committed an offence under this Act. On such person appearing before such Inspector the procedure prescribed by sections 36 to 41 inclusive, of this Act shall become applicable.

Law relating to Criminal Courts as to summoning of witness to apply.

43. The law for the time being in force as to summonses and compelling the attendance of person summoned in Criminal Courts shall, so far as the same may be applicable, apply to any summons issued by an Inspector of Customs and Excise and to any person summoned by him to appear under the provisions of this Act.

Inspector to forward a report with the offender to a Magistrate.

[1]**44.** When an Inspector of Customs and Excise forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to try the case, or admits any such person to bail to appear before such Magistrate, such Inspector shall either direct any of his subordinates to lodge

[1]Section-44 substituted *vide* order published in Government Gazette dated 14th Sawan 1975.

a complaint or forward to such Magistrate a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. In the latter case the examination of the Inspector shall not be compulsory but in the discretion of the trial Magistrate. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner, as if the complaint had been made before him as prescribed in the Code of Criminal Procedure.

Accused not to be detained for a longer period than is reasonable.

45. No person accused or suspected of having committed an offence under this Act shall be detained for a longer period than under all the circumstances of the case is reasonable; and such period shall not in the absence of the special order of a Magistrate, whether having jurisdiction to try the case or not, exceed twenty-four hours exclusive of the time necessary for the journey of such person to the place where an Inspector of Customs and Excise may be and from thence to the Court having jurisdiction to try the case.

Police to take charge of seized articles.

46. All officers in charge of Police Stations shall take charge of, and keep in safe custody, pending the orders of a Magistrate or of an Inspector of Customs and Excise, all articles seized under this Act which may be delivered to them, and shall allow any Customs and Excise Officer who may accompany such articles to the Police Station, or who may be deputed for the purpose by his superior officer to affix his seal to such articles and to take samples of and from them. All samples so taken shall also be sealed with the seal of the Officer in charge of the Police Station.

Closing of shop for the sake of public peace.

47. It shall be lawful for the Governor of any Province to which this Act applies, by notice in writing to the licensee, to require that any shop in which liquor or any intoxicating drug is sold, shall be closed, at such time or for such period as he may think necessary for the preservation of the public peace.

IX.—PENALTIES.

For illegal import, etc.

48. [1][Whoever, in contravention of this Act or of any rule or order prescribed or notified thereunder or of any licence or permit granted

[1]Section 48 substituted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

thereunder:—

(a) imports, exports, transports or possesses liquor or any intoxicating drug, or

(b) manufactures liquor or any intoxicating drug, or

(c) cultivates the poppy or hemp (*Cannabis sativa or Indica*) or coca plant or collects the spontaneous growth of the hemp plant, or

(d) constructs or works any distillery or brewery or other place for the manufacture of liquor, or

(e) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever, for the purpose of manufacturing liquor or any intoxicating drug, or

(f) sells any liquor or intoxicating drug,

shall, on conviction before a Magistrate, be punished with fine which may extend to one thousand rupees or with imprisonment for a term which may extend to one year, or with both.]

For misconduct by licensee, etc.

49. Whoever, being the holder of a licence or permit granted under this Act,—

(a) fails to produce such licence or permit on the demand of any Customs and Excise Officer or of any other officer duly empowered to make such demand, or

(b) does any act in breach of the conditions of his licence or permit not otherwise provided for by this Act, or

(c) [1][wilfully commits any contravention not otherwise provided for by this Act, of any rule or order prescribed or notified under this Act, or]

(d) permits drunkenness, riot or gaming in any place in which any liquor or intoxicating drug is sold or manufactured, or

(e) permits persons of notoriously bad character to meet or remain in any such place,

shall, on conviction before a Magistrate, be punished for each such offence, with fine which may extend to one hundred rupees or with imprisonment which may extend to three months, or with both.

For possession of illicit liquor.

50. Whoever, without lawful authority, has in his possession any quantity of liquor or any intoxicating drug, knowing the same to have been unlawfully imported, transported or manufactured, or knowing the prescribed duty not to have been paid therefor, shall, on conviction before a Magistrate, be punished with fine which may extend to five hundred rupees or with im-

[1]Section 49 clause (c) substituted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

prisonment for a term which may extend to six months, or with both.

For vexatious search or arrest.

51. Any Customs and Excise Officer or other person who, without reasonable ground of suspicion, enters or searches, or causes to be searched, any closed place,

or vexatiously and unnecessarily seizes the property of any person on the pretence of seizing or searching for anything liable to confiscation under this Act,

or vexatiously and unnecessarily detains, searches, or arrests any person,

or in any other way vexatiously exceeds his lawful powers, shall, on conviction before a Magistrate of the first class, be punished for each such offence with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

For vexatious delay.

52. Any officer or person exercising powers under this Act, who vexatiously and unnecessarily delays forwarding to an Inspector of Customs and Excise any person arrested or any articles seized under this Act shall, on conviction before a Magistrate of the first class, be punished with fine which may extend to one hundred rupees.

For abetment of escape of person arrested, etc.

[1]**53.** Any officer or person who unlawfully releases or abets the escape of any person arrested under this Act, or abets the commission of any offence against this Act [or receives or retains any liquor or intoxicating drug in respect of which an offence has been committed, knowing or having reason to believe that such offence has been committed] or acts in any manner inconsistent with his duty for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken or the Excise revenue may be defrauded, shall, on conviction before a Magistrate of the first class, for every such offence be punished with fine which may extend to [one thonsand] rupees or with imprisonment for a term which may extend to [one year], or with both.

For Customs and Excise Officer using violence.

54. Any Customs and Excise Officer who shall offer any unwarrantable violence to any person in his custody shall, on conviction before a Magistrate of the first class, be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to one month, or with both.

[1]In section 53 words [or receives .....committed] inserted and "one thousand" and "one year" substituted for "five hundred" and "six months" *vide* Notification No. 14 published in Government Gazette date 17th Phagan 1983.

[1]**55.** [Whoever knowing or having reason to believe that an offence has been committed under this Act, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to a fourth part of the longest period of imprisonment provided for the offence, or with fine, or both.]

NOTE.—A fine imposed under this section may extend to the full amount for the original offence.

For offences not otherwise provided for.

56. (1) Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act and not otherwise provided for in this Act, shall, on conviction before a Magistrate of the first class, be punished for each such wilful act or omission with fine which may extend to two hundred rupees.

For subsequent offence double punishment.

[2][(2) Whoever having been previously convicted of an offence under this Act is again convicted of an offence punishable under this Act shall be liable for every such subsequent offence to punishment not exceeding double the punishment provided herefor by this Act.]

Presumption as to commission of offence in certain cases.

57. In prosecutions under section 48, it shall be presumed, until the contrary is proved, that the accused person has committed an offence under that section in respect of any liquor or intoxicating drug, or any still, utensil, implement, or apparatus whatsoever for the manufacture of liquor, or any intoxicating drug, or any such materials as are ordinarily used in the manufacture of liquor, or any intoxicating drug, for the possession of which he is unable to account satisfactorily; and the holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under any of the previous sections of this Act as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence:

Provided that no person, other than the actual offender,

[1]Section 55 added *vide* Council Resolution dated 27th November 1903 published in Government Gazette dated 18th Phagan 1960. Section 55 was numbered as 56 and sections after that were also renumbered.

[2]Section 56 (2) added *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

shall be punished with imprisonment except in default of payment of fine.

What things are liable to confiscation.

58. In any case in which an offence has been committed under this Act, the liquor, drug, materials, still, utensil, implement or apparatus in respect of which an offence has been committed shall be liable to confiscation.

Any liquor, or intoxicating drug lawfully imported, exported, transported, manufactured, had in possession or sold along with, or in addition to, any liquor or intoxicating drug liable to confiscation under this section, and

the receptacles, packages and coverings in which any such liquor, or intoxicating drug, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, boats or other conveyances used in carrying the same,

shall likewise be liable to confiscation.

Confiscation how ordered.

59. Whenever confiscation is authorized by this Act, the Inspector of Customs and Excise or Magistrate ordering it may give the owner of the thing liable to be confiscated an option to pay in lieu of confiscation such fine as such officer thinks fit.

When an offence under this Act has been committed but the offender is not known or cannot be found, or when anything liable to confiscation under this Act and not in the possession of any person cannot be satisfactorily accounted for, the case shall be inquired into and determined by the Inspector General of Customs and Excise or by any other officer authorized by him in that behalf who may order such confiscation:

Provided that no such order shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing the persons, if any, claiming any right thereto, and evidence, if any, which they produce in support of their claims.

Power to compound offences.

60. An Inspector of Customs and Excise may accept from any person whose licence or permit is liable to be cancelled or suspended under section 22 or who is reasonably suspected of having committed an offence under section 49 or section 56, a sum of money, not exceeding two hundred rupees, in lieu of such cancelment or suspension, or by way of compensation for the offence which may have been committed, as the case may be; and in all cases whatsoever in which any property has been seized as liable to confiscation under this Act may release the same on payment of the value thereof as esti-

mated by him.

On the payment of such sum of money, or such value, or both, as the case may be, the accused person, if in custody, shall be discharged, the property seized shall be released and no further proceedings shall be taken against such person or property.

Provisions of the Criminal Procedure Code and Ranbir Dand Bidhi applicable to offences committed under this Act.

61. The provisions of the Criminal Procedure Code relating to execution so far as the same are applicable, and sections 54, 55 and 56 of Ranbir Dand Bidhi shall apply to all offences committed and to all persons punished under the provisions of this Act.

X.—MISCELLANEOUS.

Publication of rules and notifications.

62. All rules made and notifications issued under this Act shall be made and issued by publication in three successive issues of the Jammu and Kashmir Government Gazette, and shall thereupon have the force of law and be read as part of this Act, and may, in like manner, be varied, suspended or annulled.

Exemptions and prohibitions.

[1]**63.** [(a) Nothing in the foregoing provisions of this Act applies to the manufacture, possession, sale or supply by medical practitioners, chemists, druggists, apothecaries or keepers of dispensaries of any medicated article for *bona fide* medicinal purposes, or to the possession by the public of such articles lawfully supplied by them; but

(b) it shall be lawful for [2][the Government] at any time by notification to prohibit the import, export, transport, manufacture, possession, sale or supply whether for medicinal purposes or otherwise of any liquor or intoxicating drug otherwise than in accordance with such rules and conditions (if any) as may be prescribed by [2][the Government] in that behalf;

(c) it shall be lawful for [2][the Government] at any time by notification to exempt subject to such conditions, if any, as [2][the Government] may impose, any specified article or class of article or any specified person or class of person from the operation of all or any of the provisions of this

[1]Section 63 substituted *vide* Notification No. 14 published in Government Gazette dated 17th Phagan 1983.

[2]See footnote under section 1.

Act or of Rules made or prohibitions notified thereunder and in like manner to cancel such exemption;

(d) it shall also be lawful for [1][the Government] to authorize the Inspector General of Customs and Excise to permit, subject to such restrictions and conditions as, the said Inspector General may in each case or class of cases prescribe, the possession by medical practitioners of liquor or [2][opium and hemp drugs] and the preparation by them of medicines containing the same for use in their practice.]

Bar of actions.

64. No action shall lie against [1][the Government] or against any Customs and Excise Officer for damages in any Civil Court for any act *bona fide* done or ordered to be done in pursuance of this Act or of any law for the time being in force relating to the Excise revenue and all prosecutions of any Customs and Excise Officer, and all actions which may be lawfully brought against the Jammu and Kashmir Government or against any Customs and Excise Officer in respect of any thing done or alleged to have been done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and one month after notice has been given in writing to [1][the Government] or to the officer against whom the suit is to be brought.

In such actions for damages, it shall be lawful for the Court if tender of sufficient amount had been made before the action was brought, in awarding the amount so tendered, to refuse costs to the plaintiff and direct him to pay the costs of the defendant.

THE OCTROI ACT, 1958.

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[1]See footnote under section 1.

[2]In section 63 (*d*) "Opium and hemp drugs" substituted for "intoxicating drugs" *vide* order published in Government Gazette dated 1st Assuj 1988.

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THE JAMMU AND KASHMIR OCTROI ACT, 1958.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 5, dated 14th September 1901*).

An Act to consolidate and amend the Law in force in the Jammu and Kashmir State relating to octroi and the collection and expenditure of the revenue derived therefrom.

Preamble

WHEREAS it is expedient to consolidate and amend the law in force in the Jammu and Kashmir State relating to octroi and the collection and expenditure of the revenue derived therefrom; it is hereby enacted as follows:—

Title.

1. (1) This Act may be called "The Jammu and Kashmir Octroi Act, 1958".

Extent.

(2) It extends to the territories administered by His Highness the Maharaja Bahadur of Jammu and Kashmir.

Commencement.

(3) It shall come into force on the 1st Katik 1958.

2. All previous enactments and orders governing the imposition or collection of any tax under the title of the octroi tax or other matters connected with the same, except such of them as may specially be saved by notification by [1][the Government] are hereby repealed.

Repeal.

3. In this Act—

Definition.

(a) "[2][Inspector General] of Customs and Excise" denotes the person authorized to exercise subject to the approval of [1][the Government], the chief control in matters relating to Customs and Excise in the Jammu and Kashmir State.

(b) "Inspector of Customs and Excise" denotes the Chief Executive Officer of Customs and Excise for any Province to which this Act applies.

(c) "Customs and Excise Officer" includes every officer of Customs and Excise for the time being in separate charge of a Customs or Octroi range, post or *mahal* or duly authorized to perform all or any of the duties of an officer so in charge.

(d) The octroi limits of any town shall be such limits as [1][the Government] may from time to time, fix by notification in the Jammu and Kashmir Government Gazette.

[3]**3-A** The provisions of the Jammu and Kashmir Customs Act of 1958, in regard to the appointment, removal or punishment of officers appointed for the collection and control of the Customs and Excise revenue and for the delegation of powers and framing of rules in this respect by [1][the Government] shall apply *mutatis mutandis* to this Act.

4. [1][The Government] may from time to time in the manner hereinafter laid down, impose in the whole or any part of any town specified by notification in the Government Gazette, an octroi on animals or goods or both brought within the octroi limits for consumption and use therein.

Power to impose an octroi tax in towns duly notified.

5. The said octroi shall be leviable after due notification in the "Jammu and Kashmir Government Gazette" on such animals and goods and at such rates as [1][the Government] may from time to time determine.

Articles taxable and rate of taxation.

[1]In sections 2, 3, 4, 5, 11, 13, 14 and 17 for the words "His Highness the Maharaja Bahadur" the words, "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 4th Sawan 1996.

[2]"Inspector General" substituted for "Superintendent" wherever it occurs *vide* Notification published in Government Gazette dated 10th Sawan 1986.

[3]Section 3-A added *Vide* Notification published in Government Gazette dated 23rd Har 1971.

[1]**6.** The provisions of the Customs Law for the time being in force in regard to exemption from customs duty and refunds of customs duty and also the provisions of sections 16 and 17 of the Jammu and Kashmir Customs Act for the time being in force in regard to payment of duties short levied or erroneously refunded and to claims for refund of charges erroneously levied or paid, shall apply *mutatis mutandis* to exemption from refund and recovery of amounts short levied or erroneously refunded in the case of octroi duty, Possession Tax, and such minor taxes as Road Toll, *Kahcharai*, *Banwaziri*, Rafting fee and Arms licen e fee, which are controlled by the Cus oms Department.

[2][Goods reimported free of customs duty under section 22 of the Jammu and Kashmir Customs Act 1958 shall also be exempt from payment of octroi duty provided such goods are reimported into the same octroi limits from which they were exported].

Collection to be controlled by Inspector General of Customs and Excise.

7. The collection of the same shall be under the control of the Inspector General of Customs and Excise.

Duty of importer to allow inspection of goods and documents relating thereto and to pay the tax demanded.

8. Every person bringing or receiving within the octroi limits of any town notified in this behalf any article on which octroi is chargeable shall, when required by an officer authorized by the Inspector General of Customs and Excise and so far as may be necessary for ascertaining the amount of tax chargeable:—

(a) permit that officer to inspect, examine, weigh and otherwise to deal with the article;

(b) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature which he may possess relating to the article; and

(c) pay the octroi tax at the rate demanded;

and any person bringing or receiving within such limits any goods whether dutiable or not, in a closed package, shall allow such officer to inspect the contents of the same in order to ascertain whether duty is leviable or not.

Officer demanding or collecting octroi to tender bill are receipt.

9. Every officer demanding octroi by the authority of the Inspector General of Customs and Excise shall tender to every person introducing or re iving any article on which the

[1]Section 6 clause 1 (as amended *vide* Notification published in Government Gazette dated 22nd Katik 1992) substituted *vide* Act X of 1992 ; as published in Government Gazette dated 12th Baisakh 1993.

[2]Addendum to Section 6 *vide* No. 22-N, dated 4th January, 1926 published in Government Gazette dated 18th Poh 1982.

tax is claimed a bill specifying the article taxable, the amount claimed and the rate at which the tax is calculated, or, if the octroi is paid on demand, a receipt giving the same particulars.

Procedure in case of non-payment on demand.

10. (1) In case of non-payment of any octroi on demand, the officer empowered to collect the same may seize any article on which the octroi is chargeable of sufficient value to satisfy the demand.

(2) The Inspector of Customs and Excise for the Province may cause any property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand together with the expenses occassioned by the seizure, custody and sale thereof unless the demand and expenses are in the meantime paid after the lapse of one week from the seizure and after due notice has been given fixing the time and place of sale ;

Provided that articles of a perishable nature which cannot be kept without serious risk of damage, may be sold after the lapse of such shorter time as he may, having regard to the nature of the articles, think proper.

Penalty for evasion of payment of octroi.

11. If goods passing the octroi limits of a town notified in this behalf are liable to the payment of octroi, then every person who with intent to defraud [1][the Government] causes or abets the introduction of, or himself introduces or attempts to introduce within the said octroi limits, any such goods upon which payment of the octroi due on such introduction has neither been made nor tendered, shall, on proof of his offence, after due enquiry to the satisfaction of the Inspector of Customs and Excise for the Province, be punished with a fine which may extend to five times the amount of such octroi, or to fifty rupees, whichever may be greater. [2][The provisions of this and the last preceding sections shall apply, *mutatis mutandis* to evasions of *kahcharai* * * and other minor taxes controlled by the Customs and Excise Department in regard to which no separate enactment exists.]

Enquiries to be made in accordance with law governing Criminal Procedure and decisions to be appealable.

12. All enquiries made by Inspectors of Customs and Excise under the last preceding section shall be conducted so far as may be in accordance with the law of the State governing procedure in criminal cases, and all orders passed by them under that section shall be appealable to the Inspector Gene-

[1]See footnote under section 2.

[2]Words in brackets in section 11 *vide* Council Resolution No. 28 dated 21st February 1902 published in Government Gazette dated 31st Har 1959 (v) and words "and toll" after "Kahcharai" deleted *vide* Act VIII of 1995.

ral of Customs and Excise, [1][an appeal against whose orders shall lie to [2](the Government)]. [3][.....]

Octroi collections to be Spent on the municipal improvements of the town where they are collected.

13. The revenue collected under this Act in respect of imports into any town shall be expended on municipal improvements of that town, in such manner as [2][the Government] may from time to time direct.

Power to make rule.

14. The Inspector General of Customs and Excise will be empowered, subject to the approval of [2][the Government] to make rules governing the following matters, namely:—

(a) the constitution of octroi posts and the exhibition of the octroi tariff thereat,

(b) the grant of refunds on export of animals or goods, on which octroi has been paid,

(c) the custody and storage of animals and goods declared not to be for use and consumption within the town into which they are brought,

(d) the exemption from octroi on reimport of animals and goods that have once paid it and are exported from the towns into which they have been brought, and

(e) generally to carry out the provisions of this Act.

14-A. [4][The Government] may from time to time by notification in the Government Gazette restrict or prohibit the importation into or exportation from any town wherein an octroi tax is imposed under this Act of goods of any specified description.

Rules to be notified in the Jammu and Kashmir Government Gazette.

15. All rules made and notifications issued under this Act shall be made and issued by publication in three successive issues of the Jammu and Kashmir Government Gazette.

All such rules and notifications shall thereupon have the force of law and be read as part of this Act, and may in like manner be varied, suspended or annulled.

[1]Words in section 12 added *vide* order published in Government Gazette dated 18th Sawan 1961 and in these words "Government" substituted for "Minister-in-charge" *vide* Act X of 1996.

[2]See footnote under section 2.

[3]Words at the end in section 12 substituted *vide* order published in Government Gazette dated 18th Sawan 1961 are now deleted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[4]Section 14-A added *vide* Notification published in Government Gazette dated 31st Jeth 1978.

[5]In section 14-A the words "the Government" substituted for the words "With the approval of His Highness the Maharaja Bahadur the Minister-in-charge of the Customs and Excise Department" *vide* Act X of 1996 published in Government Gazetted dated 15th Bhadon 1996.

Punishment for infringement of a rule or notification under Section 14 or 14-A duly promulgated.

[1]**16.** The infringement of any [rules made under section 14 or notification issued under section 14-A] duly promulgated shall be punishable, after enquiry by Inspectors of Customs and Excise, with fine which may amount to fifty rupees, subject to the same provisions in respect of the conduct of the enquiry and appeal as are laid down in the case of evasion of payment of duty.

Bar of actions.

17. No action shall lie against [2][the Government] of Jammu ane Kashmir or against any Customs and Excise Officer for damages in any Civil Court for any act *bona fide* done or ordered to be done in pursuance of this Act or of any law for the time being in force relating to the octroi revenue.

And all prosecutions of any Customs and Excise Officer and all actions which may be lawfully brought against the Jammu and Kashmir Government or against any Customs and Excise Officer in respect of anything done or alleged to have been done in pursuance of this Act, shall be instituted within six months from the date of the act complained of and not afterwards:

Provided that no such suit shall be instituted until the expiration of one month after notice has been given stating the cause of action and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such notice has been given.

In such action, if for damages, it shall be lawful for the Court if tender of sufficient amount had been made before the action was brought in awarding the amount so tendered, to refuse costs to the plaintiff and direct him to pay the cost of the defendant.

———

[*Translated from original in Urdu published in Government Gazette dated 11th Har 1958.*]

RULES PLACING RESTRICTIONS ON REMOVAL OF FEMALES FROM BALTISTAN.

No. 8 of 1958.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 35, dated 4th February, 1901.*)

1. No Balti female will be permitted to go beyond the boundaries of Baltistan without presenting a permit. (Such

[1]Words in brackets in section 16 substituted *vide* Notification published in Government Gazette dated 31st Jeth 1978.

[2]See footnote under section 2.

permit, allowing such permission, will be granted under these Rules.)

2. All such applications for grant of permit, shall be presented before the Tehsildar of the *illaqa* in which such female resides. Such application shall be made by the female who wants to go beyond the boundaries of Baltistan through her husband, brother or any other proper guardian and it shall particularly contain the following facts :—

(a) Name of the female with age, parentage and residence,

(b) Name of the person (if any) accompanying her and his relation with her.

(c) Reason, why she wants to go beyond the boundaries of Baltistan,

3. On presentation of such an application, the Tehsildar shall enquire into the correctness of the facts mentioned in the application and after satisfying himself that—

(a) the said female is not of less than 50 years age, or

(b) in case her age is less than 50 years, her duly married husband, or her father or brother or any other proper guardian is accompanying her.

(c) She is not going out of Baltistan with some improper motive.

will grant a permit under his signature and the seal of the Court permitting her to go out of the boundaries of Baltistan.

4. No permit will be given except under the provisions of Rule 3.

5. An appeal against the order of the Tehsildar refusing to issue a permit shall bie to the Wazir Wazarat within 60 days from the date of such order.

6. A second appeal from the order of the Wazir Wazarat will bie to the Revenue Minister within three months from the date of such order.

7. Whoever takes away or abets in taking away a Balti female beyond the boundaries of Baltistan or whosoever being a Balti female goes beyond the boundaries of Baltistan in contravention of these Rules, shall be punished with imprisonment which may extend to three months or with fine which may extend to one hundred rupees or with both.

THE JAMMU AND KASHMIR STATE FISHERIES ACT, 1960.

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SECTION.

1 Short title and commencement.

2 Local extent.

3 Extent of repeal of the existing laws and practices; saving clause.

4 Interpretation clause.

5 Declaring what waters are "Sanctuaries", "Trout waters", "Reserved water's" and "Protected Waters"; declaring that fishing be prohibited adsolutely or subject to certain specified conditions.

6 Absolute prohibition against fishing in "Sanctuary".

7 Fishing in "Trout", "Reserved" or "Protected" waters allowed only under a licence; use of dynamite etc. prohibited in any "water"; use of poison lime etc. prohibited in any "water"; erection of "fixed engine" etc. prohibited in any water; night fishing prohibited in any "Trout" or "Reserved" water; prohibition as to capture of English Trout; possession of nets by a person other than a licence-holder prohibited; aiding and abeting the commission of any of the above offences prohibited; shikaries taking service not having a licence; general prohibition; penalties.

8 Further penalties.

9 Penalty for continuing to commit an offence after having been waroed to desist.

10 Enhanced punishment awardable on second conviction, etc.

11 Courts by which offences under this Act are triable.

12 Rewards.

13 Procedure against accused persons.

14 Application for licences how made.

15 Grant of licence how made.

16 Special control of the Game Preservation Department in "Trout, Reserved and Protected waters".

THE JAMMU AND KASHMIR STATE FISHERIES ACT, 1960.

(Sanctioned by His Highness the Maharaja Sahib Bahadur in Council vide State Council Resolution No. 3 dated 10th July 1903.)

WHEREAS it is expedient to consolidate and amend the law regulating the capture of fish within the territories of His Highness the Maharaja of Jammu and Kashmir, it is hereby enacted as follows:—

Short title and commencement.

1. This Act may be called "the Jammu and Kashmir Fisheries Act," and shall come into force on the 1st day of Baisakh, Samvat 1960.

2. It shall extend to such local areas within the territories of His Highness the Maharaja of Jammu and Kashmir, as may, from time time, be declared by a notification, published in the Jammu and Kashmir Government Gazette, under the orders of [1][the Government] in that behalf.

Local extent.

3. The Jammu and Kashmir Fisheries Regulation 1901, is hereby repealed and the system hitherto in vogue in the Kashmir Province, of forming out the right of fishing known as *Mahal-i-Mahigiri* shall, immediately on the passing of this Act cease to exist.

Extent of repeal of the existing laws and practices.

All orders issued and taxes imposed, prior to the passing of this Act, shall, so for as they are consistent with the provisions contained in this Act or the rules made thereunder, be deemed respectively to have been issued and imposed hereunder.

Saving clause.

4. In this Act, unless there is anything repugnant in the subject or contexts,—

Interpretation clause.

"Water" means and includes all rivers, streams and lakes; all ponds belonging to the State, and all tanks constructed by, or under the authority of, the State.

"Sanctuaries" mean and include waters, where fishing, because of the sacred nature of the places or otherwise, shall under no circumstances, be permitted.

"Trout Waters" mean and include all waters, which are now being stocked with English trout, in which no fishing shall be permitted, except, under a special licence issued for that purpose under the conditions laid down under [2]Notification 8, as well as a permit showing the water and period for which the licence is issued.

"Reserved Waters" mean and include waters where fishing shall not be permitted, except, under a special licence issued in that behalf, in the manner indicated hereafter, nor shall the capture of fish be allowed by means other than a rod and line or a casting net of the kind described in clause (15) of [2]Notification 8.

N. B.—The ordinary landing net and bait net used by rod fishermen is permitted to be used, provided the owner holds a licence for rod fishing as laid down in [2]Notification 8.

"Protected Waters" mean and include waters where fishing shall not be permitted, except under a licence issued in that behalf, in the manner indicated hereafter, nor shall the

[1]In section 2, 5 (1), 5 (2) and 17 for the words "His Highness the Maharaja Bahadur" the words "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996

[2]For Notification see Council order No. 606-C of 1939 published in Government Gazette dated 15th Bhadon 1996.

capture of fish be allowed, except by one or other of recognised modes of fishing.

"Fixed Engine" means and includes any net (other than those referred to in the clause above and the note thereto relating to "Reserved Waters"), and any cages, traps, sluice or other contrivance for taking fish, fixed in the soil, or made stationary in any other way.

N. B.—The erection of dams for working of mills, etc., is permitted, but in all cases a free channel must be left open for the passage of fish up and down the river. The channel should, if possible, be half the river but the rights of mill owners should be protected, so that a sufficiency of water is guaranteed for their mills. The construction of the dam to form a sluice for the capture of fish is illegal as forming "Fixed Engine" under the terms of the above clause.

5. (1) [1][The Government] may, by a notification published in the Jammu and Kashmir Government Gazette in that behalf, from time to time, declare the localities situated within the areas, in which this Act is in force, which shall for the purposes of this Act, be treated as "Sanctuaries", "Trout Waters," "Reserved Waters," and "Protected Waters," respectively, and may, from time time, cancel or modify the same.

Declaring what waters are "Sanctuaries," "Trout waters", "Reserved waters" and "Protected waters."

(2) [1][The Government] may, by a notification published in the Jammu and Kashmir Government Gazette in that behalf from time to time, declare that the capture of fish by any of the recognised modes of fishing, be prohibited absolutely or subject to certain specified conditions, within certain water or waters, or fix special fees for licences in any water or waters and may, from time to time, cancel or modify the same.

Declaring that fishing be prohibited absolutely or subject to certain specified conditions.

(3) The following places are reserved for rod-fishing only from April 15th to September 15th subject to the close seasons laid down under [2]Notification 7 (d):—

(a) The Sindh River at Ganderbal from half a mile below the old bridge to half a mile above the *chenars* on the left bank and including the "Island Pool", and also from 100 yards above Utkhuroo village to the *chenar* tree 300 yards below the village with the reservation that all fishing is stricly prohibited at Gandarbal within the limits of His Highness the Maharaja Sahib's camping ground.

(b) The Dal Gate Pool and the Canal Gate Pool just above the Library, and the Pool at Badshahi Bagh.

N. B.—Sportsmen holding Rs. 5 licence for reserved Waters wishing to fish in the Dal Gate and Canal Gate Pool which lie within Municipal limits may be

[1]See footnote under section 2.

[2]For Notifications See Council order No. 606-C. of 1939 published in Government Gazette dated 15th Bhadon 1996.

called upon to pay the extra Licence fee of Rs. 2 laid down by the Municipality for fishing within Municipal waters.

(c) The bridges at Baramulla, Sopore, Sambal (with the exception of the limits of the sacred temple of "Nand Kæshar-Bharin"), Bijbihara from 100 yards up stream to half a mile below the bridge and the Jhelum at Ningle from the mouth of the Woolar Lake to the boundary pillar.

(d) The Vishau with its branches from its source to the bridge at Kaimoo.

6. Whoever is found fishing in any "Sanctuary" shall be liable to be punsihed with imprisonment of either description for a term which may extend to two months or with fine which may extend to Rs. 100 or with both.

Absolute prohibition against fishing in "Sanctuary."

7. (a) Whoever is found fishing in any "Trout" "Reserved" or "Protected" water without having previously obtained a licence therefor, in conformity with the rules set forth in [1]Notification 8;

Fishing in "Trout", "Reserved" or "Protected" waters allowed only under a licence.

or

(b) Whoever uses dynamite or other explosive substance in water with intent thereby to catch or destroy any fish that may be there;

Use of dynamite etc., prohibited in any "water."

or

(c) Whoever puts any poison, lime or other noxious material, into any water with intent thereby to destroy or catch any fish;

Use of poison, lime etc., prohibited in any "water."

or

(d) Whoever erects a "Fixed Engine" or Weir on the bank of, or in, any "water" for the purpose of capturing fish, or uses for the like purpose any instrument or net other than those allowed by [1]Notification 8;

Erection of "Fixed Engine" etc, prohibited in any water.

or

(e) Whoever is found fishing in any "Trout" or "Reserved" water in contravention of the provisions of [1]Notification 6;

Night fishing prohibited in any "Trout" or Reserved" water.

or

(f) Whoever is found capturing English Trout in any form whatever, except as provided for under [1]Notification 8;

Prohibition as to capture of English Trout.

or

(g) Who, not being a licence-holder under the terms of this Act, is found in the possession of a net or nets for the illegal capture of fish;

Possession of nets by a person other than a licence-holder prohibited.

or

[1]For Notifications See Council order No. 606-C. of 1939 published in Government Gazette dated 15th Bhadon, 1996.

(h) Whoever aids and abets the commission of any of the above offences ;

Aiding and abetting the commission of any of the above offences prohibited.

or

(i) Who, being *shikari*, shall take service with sportsmen not being licensed under section 16 (c) *infra* ;

Shikaris taking service not having a licence.

or

(j) Whoever in any way contravenes or attempts to contravene the provisions of this Act or the rules issued thereunder, for which no special punishment is provided, either in this Act or the rules aforesaid, shall be liable to be punished with imprisonment, either simple or rigorous, which may extend to one month or with fine which may extend to Rs. 50 or with both. While, if a *shikari*, he shall also be liable to have his licence forfeited for one year or for such further period as may be considered necessary.

General prohibition penalties.

NOTE.—Imprisonment for an offence committed in "Trout" or "Reserved" waters may be either simple or rigorous, but it shall only be "simple" in the case of an offence committed in "Protected Waters."

EXCEPTION.—Notwithstanding anything in clause (a) *supra* His Highness the Maharaja may exempt any specified individual or individuals from taking out licence for fishing in either "Trout" or "Reserved" or "Protected" Waters.

8. In addition to the punishment mentioned in section 6 and at the end of section 7 any fixed engine or other article used for the capture of fish in contravention of the provisions of this Act or the rules issued thereunder, as well as any fish thereby captured, shall be liable to be confiscated by the Government.

Further Penalties.

9. Any person continuing to commit any of the offences mentioned in sections 6 and 7, *supra* after he has been warned by any authority to desist, shall, in addition to the punishment awardable on first conviction, be liable to be punished with a fine which may extend to Rs. 10, for each and every day succeeding that on which he was so warned.

Penalty for continuing to commit an offence after having been warned to desist.

10. A person convicted twice or more frequently of the offence mentioned in section 6 *supra*, shall be liable to be punished with imprisonment (either simple or rigorous) for a period not exceeding six months or with fine not exceeding Rs. 500 or with both. Similarly, a person convicted twice or more frequently of any of the offences mentioned in section 7 *supra* shall be liable to be punished with imprisonment (either simple or rigorous) which may extend to two months or with fine not exceeding Rs. 100 or with both.

Enhanced punishment awardable on second conviction, etc.

11. Offences punishable under this Act or the rules made thereunder shall be tried and inquired into by the State Courts in the ordinary way and in accordance with the Criminal Law of the State, except when the accused are persons who are not liable to jurisdiction of the State Courts when the trial shall be in accordance with the provisions of the law for the time being in force and relating to such offenders.

Courts by which offences under this Act are triable.

12. (1) Any person or persons giving such *bona fide* information as shall lead to a conviction under these Acts (Fisheries) shall be entitled to a reward which may at the discretion of the Magistrate trying the case extend to the full amount of the fine inflicted.

Rewards.

(2) Watchers of the Game Preservation Department and fisheries who shall give information under para (1) *supra* shall not be debarred from receiving the full reward.

(3) The Magistrate trying the case will have the power to grant the above rewards (1) and (2) *supra* on his authority without any reference to the Government.

13. (1) When any person who, in the presence of an officer duly appointed in this behalf under the rules in force, has committed or has been accused of committing any offence under this Act, refuses, on demand of such officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

Procedure against accused person.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate, if so required, provided that if such person is not resident in the State territories, the bond shall be secured by a surety or sureties resident in State territories.

(3) Should the true name and residence of such person not be ascertained within 24 hours from the time of arrest, or should he fail to execute the bond, or if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

NOTE.—The procedure herein prescribed is applicable only in the case of accused who are liable to the jurisdiction of the State Courts. In other cases the person in whose presence the offence has been committed, should after ascertaining the name and address, report the matter through his superior officer to the Magistrate having jurisdiction. Should the accused decline to give his name and address, the matter should be reported at once to the Game Warden, Srinagar, who will take the necessary action.

14. Subject to the restrictions of section 15 applications for the grant of a licence for fishing in "Trout" or "Reserved" or "Protected" waters will be made in accordance with the provisions laid down in [1]Notification 8 of this Act, and to the officer authorized to receive such applications under the same. Each such application shall be accompanied by a deposit of a fee leviable in respect of each such licence, according to clause 3 of the aforesaid notification.

Application for licences how made.

15. On receipt of the application and the fee just mentioned, the officer referred to in the preceding section shall grant a licence in accordance with clause (4) of [1]Notification 8.

Grant of licence how made.

A licence thus granted will run for a period of one year, commencing from beginning of each Samvat year, with the following exception,—At Tangrot, where the licence will run from the commencement of the season, *viz.*, January 1st each year; and,—In the case of Trout waters, where the licence shall extend during the fishing season only which for the present will be from April 1st to September 30th.

16. (a) The grant of licences, the appointment and dismissal of watchers and matters of control, whether financial or executive, in "Trout," "Reserved" and "Protected" waters shall be under the Game Warden.

Special control of the Game Preservation Department in "Trout", "Reserved" and "Protected" waters.

(b) The State reserve to themselves the right to close any river or part of a river at any time for State purposes, or if the river or part of the river in question has been too heavily fished, or for any other reason. The Game Warden is further authorized under this rule, to take immediate action if he is satisfied that it is necessary, reporting the steps taken to the Government; and in the event of a licence having been taken out for the period in question, the Game Warden is authorized to refund the licence fees that have been paid.

(c) The State reserve to themselves the right to refuse to issue any licence, or to cancel any licence, at any time, if circumstances render it necessary.

(d) On all the Trout Waters, at Tangrot, and Ningle on the Jhelum no one shall take service as a regular *shikari* with sportsmen until he has been registered by the Game Warden, and granted a licence on the form prescribed.

Employers of *shikaris* are advised to insist on the *shikaris* producing their registration forms, as these show any adverse entries which have been made against them.

17. [2][The Government] may, from time to time, make

[1]For Notifications See Council order No. 606-C. of 1939 published in Government Gazette dated 15th Bhadon, 1996.

[2]See footnote under section 2.

rules with regard to all or any of the following matters, as may be deemed necessary, and may cancel or modify the same. Rules thus made or modified shall, unless otherwise directed, have effect immediately on their publication in the Jammu and Kashmir Government Gazette:—

(a) The procedure to be observed in the matter of application for any grant of licences, the forms and local extent of such licences, and the maintenance of registers in connection with the issue of licences.

(b) The scale of fees for the different kinds of licences, their recovery and payment into the Treasury and the maintenance of register in connection with such recovery and payment into the Treasury.

(c) Declaring the recognised modes of fishing.

(d) Fixing the dimensions of meshes and rings in the different kinds of nets.

(e) Prescribing the procedure according to which the local Revenue authorities, under the orders of the Provincial Governors, shall render assistance to the State Game Preservation Department in the matter of the control of "Trout, Reserved or Protected waters."

(f) Prescribing the duties to be performed by the various officials to be appointed for the purpose of carrying out the objects of this Act.

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THE CANAL AND DRAINAGE ACT, 1963.

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[*Translated from original in Urdu published in Government Gazette dated 18th Assuj 1967.*]

THE CANAL AND DRAINAGE ACT, 1963.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur published in Government Gazette dated 18th Assuj 1967.*)

An Act to regulate irrigation, navigation and drainage in Jammu and Kashmir State.

Preamble.

WHEREAS it is expedient to regulate the use and control of water for irrigation and other purposes from all rivers, streams, lakes and natural collection of standing water, it is enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called the Jammu and Kashmir State Canal and Drainage Act Samvat 1963.

Extent.

It extends to the whole of Jammu and Kashmir State and and applies to all lands, whether permanently settled, temporarily settled, or free from revenue and it will come into force after it is sanctioned.

Interpretation clause.

2. In this Act, unless there be something repugnant in the subject or context:—

Canal.

(1) "canal" includes—

(a) all canals, channels and reservoirs constructed, maintained or controlled by Government for the supply or storage of water;

(b) All works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs;

[1](bb) all water courses as defined in sub-section (2) of this section.

[1](c) "any part of a" river, stream, lake or natural collection of water or natural drainage channel, to which the Government has applied the provisions of Part II of this Act.

(2) "Water-course" means any channel which is supplied with water from a canal, but which is not maintained at the cost of Government, and all subsidiary works belonging to any such channel.

Drainage-work.

(3) "Drainage work" includes escape-channels from a canal dams, weirs, embankments, sluices, groins and other works for the protection of lands from flood or from erosion, formed or maintained by the Government under the provisions of Part VII of this Act but does not include works for the removal of sewage from towns.

Vessel.

(4) "Vessel" includes boats, rafts, timber and other floating bodies.

Governor.

(5) "Governor" means the head revenue officer of a district and includes any other officer appointed under this Act to exercise all or any of the powers of a Governor.

[1]Clause (*bb*) and words in inverted commas in clause (*c*) added *vide* **Act IV of 1977** published in Government Gazette dated 16th Chet 1977.

(6) "Canal Officer" means an officer appointed under this Act to exercise control or jurisdiction over a canal or any part thereof;

Canal Officer.

"State Engineer" means an officer exercising general control over a canal or portion of a canal.

"Divisional Canal Officer" means an officer exercising control over a division of a Canal;

"Sub-Divisional Canal Officer" means an officer exercising control over a sub-division of a canal.

(7) "District" means a district as fixed for revenue purposes.

3. The Government may from time to time declare, by notification in the Government Gazette, the officers whom, and the local limits within which all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

Power to appoint Officers.

All officers mentioned in section 2, clause (6) shall be respectively subject to the orders of such officers as the Government from time to time direct.

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

4. Whenever it appears expedient to [1][the Government] that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by [1][the Government] for the purpose of any existing or projected canal or drainage-work [1][the Government] may, by notification in the official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

Notification to issue when water supply is to be applied for public purposes.

[2]**4-A.** As soon as practicable, after the issue of such notification, the Governor shall cause public notice to be given at convenient places, stating that the Government intends to apply or use the said waters as aforesaid and that claims for compensation in respect of the matters mentioned in section 6 may be made before him.

[1]In section 4, 4-A, 5, 6, 15, 29, 33, 43, 44, 52, 53, 54, 55, 56, 60, 61, 66 and 71 for the word "Darbar" the words "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

NOTE:—See also Notification No. 11-L/84 published in Government Gazette dated 9th Maghar 1984.

[2]Section 4-A added *vide* Regulation IV of 1977 published in Government Gazette dated 16th Chet 1977.

Power of Canal Officer.

5. At any time after the day so named any Canal Officer, acting under the order of [1][the Government] in this behalf, may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Damage for which compensation shall not be awarded.

6. No compensation shall be awarded for any damage caused by—

(a) stoppage or diminution or percolation or floods;
(b) deterioration of climate or soil;
(c) stoppage of navigation, or of the means of drifting timber or watering cattle;
(d) displacement of labour.

Matter in respect of which compensation may be awarded.

But compensation may be awarded in respect of any of the following matters:—

(e) stoppage or diminution of supply of water through natural channel to any defined artificial channel, whether above or under-ground, in use at the date of the said notification;

(f) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;

(g) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;

(h) damage done in respect of any right to a water-course or the use of any water to which any person has a prescriptive right of 12 years;

(i) any other substantial damage, not falling under any of the above clauses (a), (b), (c), or (e) and caused by the exercise of the powers conferred by this Act which is capable of being ascertained and estimated at the time of awarding such compensation.

In determining the amount of such compensation, regard shall be had to the provisions of the State Land Acquisition [2][Law and Rules] and the amount of compensation shall be sanctioned by the Wazir-i-Wazarat or any other officer appointed by the Governor in this behalf. The Governor will

[1]See footnote under section 4.

[2]Substituted for "rules" *vide* Act IV of 1977 published in Government Gazette dated 16th Chet 1977.

satisfy himself as to the fairness of the amount determined for payment.

No right to any such supply of wates as is referred to in clause (e), (f) or (g) of this section, in respect of a work or channel not in use at the date of the notification, shall be acquired as against [1][the Government],

and no right to any of the advantages referred to in clauses (a), (b) and (c) of this section shall be acquired as against [1][the Government].

Limitation of claims.

7. No claim for compensation for any stoppage, diminution or damage shall be made after the expiration of one year from such stoppage, diminution or damage, unless the Governor is satisfied that the claimant had sufficient cause for not making the claim within such period.

Enquiry into claims and amount of compensation.

8. The Wazir-i-Wazarat shall proceed to enquire into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant in accordance with the Land Acquisition [2][Law and Rules.]

Abatement of rent on interruption of water supply.

9. Every tenant holding an unexpired lease, having a right of occupancy, who is in occupation of of any land at the time when any stoppage or diminution or water supply, in respect of which compensation is allowed under section 6, takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

Enhancement of rent on restoration of water supply.

10. If a water supply increasing the vlaue of such holding is afterwards restored to the said land, the rent of the tenant may be enhanced in respect of the increased value of such land due to the restored water supply, to an amount not exceeding that at which it stood immediately before the abate ment.

Such enhancement shall be on account only of the restored water supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

Compensation when due.

11. All sums of money payable for compensation under this part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of.

[1]See footnote under section 4.
[2]See footnote under section 6

PART III.

OF THE CONSTRUCTION AND MAINTENANCE OF WORKS.

Power to enter and survey, etc.

12. Any Canal Officer, or other person acting under the general or special order of a Canal Officer, may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon; and dig and bore into the sub-soil; and make and set up suitable land-marks, level. marks and water-gauges, and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal Officer.

Power to clear land.

And where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle;

Power to inspect and regulate water supply.

and may also enter upon any land, building or watercourse on account of which any water-rate is chargeable, for the purpose of inspection or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of such canal:

Notice of intended entry into houses.

Provided that, if such Canal Officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water flowing from any canal, he shall previously give the occupier of such building, court or garden at least fifteen days' notice in writing of his intention to do so.

Compensation for damage caused by entry.

In every case of entry under this section, the Canal Officer shall, at the time of such entry, tender compensation for any damage which may be occassioned by any proceedings under this section; and, in case of dispute as to the sufficieny of the amount so tendered, he shall forthwith refer the same for decision by the Governor and such decision shall be final.

Power to enter for repairs and to prevent accidents.

13. In case of any accident or happening being apprehended to a canal any Divisional Canal Officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal, and may execute all works which may be necessary for the purpose of repairing or preventing such accident.

In every such case such Canal Officer or person shall tender compensation to the proprietors or occupiers of the said lands for all damage done to the same. If such tender is not accepted, the Canal Officer shall refer the matter to the Governor, who shall proceed to award compensation for the damage as though the Governor had directed the occupation of the lands under the Land Acquisition [1][Law and Rules].

Compensation for damage to land.

14. Any person desiring to use the water of any canal may apply in writing to the Divisional or Sub-Divisional Canal Officer of the division or sub-division of the canal from which the water-course is to be supplied, requesting such officer add to construct or improve a water-course at the cost of the applicants.

Application by persons desiring to use canal water.

The application shall state the works to be undertaken, the approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal Officer, and how the payment is to be made.

Contents of application.

When the assent of the State Engineer is given to such application, all the applicants shall, after the application has been duly attested before the Wazir-i-Wazarat, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Liability of applicants for cost of works.

Any amount becoming due under the terms of such application and not paid to the Divisional Canal Officer, or the person authorised by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Wazir-i-Wazarat as if it were an arrear of land revenue.

Recovery of amount due.

15. There shall be provided, at the cost of [2][the Government], suitable means of crossing canals constructed or maintained at the cost of [2][the Government], at such places as [2][the Government] thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

Government to provide means of crossing canals.

On receiving a statement in writing, signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Gov-

[1]Substituted for "rules" vide Act IV of 1977 published in Government Gazette dated 16th Chet 1977.

[2]See footnote under section 4.

ernor shall cause enquiry to be made into the circumstances of the case and if he thinks that the statement is established, he shall report his opinion thereon for the consideration of [1][the Government] and [1][the Government] shall cause such measures in reference thereto to be taken as it thinks proper.

Persons using water-course to construct works for passing water accross road.

16. The Divisional Canal Officer may issue an order to the persons using any water-course to construct suitable bridges, culverts or other works for the passage of the water of such water-course across any public road, canal or drainage-channel in use before the said water-course was made, or to repair any such works.

Such order shall specify a reasonable period within which such construction or repairs shall be completed;

If they fail Canal Officer may construct.

and if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal Officer, he may with the previous approval of the State Engineer, himself construct or repair the same;

And recover cost.

and if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal Officer, the amount shall, on the demand of the Divisional Canal Officer, be recoverable from them by the Governor as if it were an arrear of land revenue.

Adjustment of claims between persons jointly using water-course

17. If any person, jointly responsible with others for the construction or maintenance of a water-course, or jointly making use of a water-course with others, neglects or refuses to pay his share of the cost of such construction or maintenance or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-Divisional Canal Officer on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of fortnight from the service, he will investigate the case, and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Such order shall be appealable to the Governor, whose order thereon shall be appealable to the Revenue Minister.

Recovery of amount found due.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Governor, from the

[1]See footnote under section 4.

person directed to pay the same, as if it were an arrear of land revenue.

Supply of water through intervening water-course.

18. Whenever application is made to Divisional Canal Officer for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course he shall give notice to the persons responsible for the maintenance of such water-course to show cause, on a day not less than a fortnight from the date of such notice why the said supply should not be so conveyed: and, after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course.

When such officer determines that a supply of canal water may be conveyed through any water-course as aforesaid, his decision shall when confirmed or modified by the State Engineer, be binding on the applicant, and also on the persons responsible for the maintenance of the said water-course.

Such applicant shall not be entitled to use such water-course until he has paid the expense of any alteration of such water-course necessary in order to his being supplied through it, and also such share of the first cost of such water-course as Divisional or State Engineer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water-course so long as he uses it. No claims arising out of the provisions of this section shall be determined by a Civil Court.

Application for construction of new water-course.

19. Any person desiring the construction of a new water-course may apply in writing to the Divisional Canal Officer, stating—

(1) That he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water-course to pass, a right to occupy so much of the land as will be needed for such water-course.

(2) That he desires the said Canal Officer, in his behalf and at his cost, to do all things necessary for acquiring such right;

(3) that he is able to defray all cost involved in acquiring such right and constructing such water-course.

Procedure of Canal Officer thereupon.

20. If the Divisional Canal Officer considers:—

(1) that the construction is expedient, and

(2) that the statements in the application are true, he shall call upon the applicant to make such deposit as

the Divisional Canal Officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 26 and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water-course, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the water-course is proposed to be taken, that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Governor of every district in which any part of such land is situate.

Application for transfer of existing water-course.

21. Any person desiring that an existing water-course should be transferred from its present owner to himself may apply in writing to the Divisional Canal Officer stating:—

(1) that he has endeavoured unsuccessfully to procure such transfer from the owner of such water-course;

(2) that he desires the said Canal Officer, in his behalf and at his cost, to do all things necessary for procuring such transfer;

(3) that he is able to defray the cost of such transfer:

Procedure thereupon.

If the Divisional Canal Officer considers:—

(a) that the said transfer is necessary for the better management of the irrigation from such water-course, and

(b) that the statements in the application are true, he shall call upon the applicant to make such deposit as the Divisional Canal Officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation that may become due under the provisions of section 26 in respect of such transfer;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send copy of the notice to the Governor of every Province through which such water-course passes. The Governor on receiving a notice shall, if the objections regarding construction of a new water-course or transfer of an existing water-course from its present owner to the applicant be held genuine, determine the market value of the land through which the water-course is to pass.

Objections to construction or transfer applied for.

22. Within thirty days from the publication of a notice under section 20 or section 21, as the case may be, any person interested in the land or water-course to which the notice refers may apply to the Divisional Canal Officer by petition, stating

his objection to the construction or transfer for which application has been made.

The Divisional Canal Officer may either reject the petition or may proceed to enquire into the validity of the objection.

The Divisional Canal Officer shall record in writing all orders passed by him under this section and the grounds thereof. Appeals from his order shall lie to the Governor.

When applicant may be placed in occupation.

23. If no such objection is made, or where such objection is made and the Divisional Canal Officer over-rules it, and in case appeal is filed that appeal is also rejected by the Governor, the Divisional Canal Officer shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water-course to be transferred, as the case may be.

Procedure when objection is held valid.

24. If, on appeal, the Governor considers any objection made as aforesaid to be valid, he shall inform the Divisional Canal Officer accordingly and, if such officer sees fit, he may in the case of an application under section 19, alter the boundaries of the land so marked out, and may give fresh notice under section 20 and the procedure hereinbefore provided shall be applicable to such notice, and the Divisional Canal Officer shall thereupon proceed as before provided.

Procedure when Canal Officer disagrees with Governor.

25. If the Canal Officer disagrees with the Governor the matter shall be referred for decision to the [1][the Government].

Such decision shall be final, and the Governor, if he is so directed by such decision, shall, subject to the provisions of section 26 cause the said applicant to be placed in occupation of the land so marked out or of the water-course to be transferred, as the case may be.

Expenses to be paid by applicant before receiving occupation.

26. No such applicant shall be placed in occupation of land or water-course until he has paid to the person named by the Governor such amount as the Governor determines to be due as compensation for the land or water-course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

Procedure in fixing compensation.

In determining the compensation to be made under this section the Governor shall proceed under the provisions of the State Land Acquisi-

[1]In section 25 "Government" substituted for "Revenue Minister" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

tion [1][Law and Rules.]

Recovery of compensation and expenses.

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Governor as if it were an arrear of land revenue and shall, when recovered, be paid by him to the person entitled to receive the same.

Conditions binding applicant placed in occupation.

27. When any such applicant is placed in occupation of land or of a water-course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest:—

First.—All works necessary for the passage across such water-course, of water-course existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative-in-interest to the satisfaction of the Divisional Canal Officer.

Second.—Land occupied for a water-course under the provisions of section 20 shall be used only for the purpose of such water-course.

Third.—The proposed water-course shall be completed to the satisfaction of the Divisional Canal Officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water-course is transferred on the terms of a rent-charge.

Fourth.—The applicant or his representative in interest shall so long as he occupies such land or water-course, pay rent for the same at such rate and on such days as are determined by the Governor when the applicant is placed in occupation.

Fifth.—If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative-in-interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the Governor determines.

Sixth.—The Governor may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative-in-interest, the

[1]Substituted for "Rules" *vide* Act IV of 1977 published in Government Gazette dated 16th Obet 1977.

Governor may recover the amount, with interest thereon at the rate of six per cent. per annum from the date on which it became due, as if it were an arrear of land revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

or if any water-course constructed or transferred under this Act is disused for three years continuously,

the right of the applicant, or of his representative-in-interest, to occupy such land or water-course shall cease absolutely.

Procedure applicable to occupation for extensions and alterations.

28. The procedure hereinbefore provided for the occupation of land for the construction of a water-course shall be applicable to the occupation of land for any extension or alteration of a water-course, and for the deposit of soil from water-course clearances.

PART IV.

OF THE SUPPLY OF WATER

In absence of written contr ct, water supply to be subject to rules.

29. In the absence of a written contract so far as any such contract does not extend, every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by [1][the Government] in respect thereof.

30. Such contracts and rules must be consistent to the following conditions:—

Condtions as to.

Power to stop water supply.

(a) The Divisional Canal Officer may not stop the supply of water to any water-course, or to any person except in the following cases:—

(1) whenever and so long as it is necessary to stop the supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the Government;

(2) whenever and so long as any water-course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom;

(3) within periods fixed from time to time by the Divisonal Canal Officer:

[1]See footnote under section 4.

(b) No claim shall be made against the Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the Government, or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal Officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorised by the Government.

Claims to compensation in case of failure or stoppage of water.

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Governor for any loss arising from such interruption, and the Governor may award to the petitioner reasonable compensation for such loss;

Claims on account of interruption from other causes.

(d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year;

Duration of supply.

(e) Unless with the permission of the State Engineer, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sublet or otherwise transfer his right to such use:

Sale or sub-letting of right to use canal water.

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant:

But all contracts made between Government and the owner or occupier of any immoveable property, as to the supply of canal water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place:

Transfer with land, of contracts for water.

(f) No right to the use of the water of a canal shall be, or be deemed to have been, acquired, nor shall Government be bound to supply any

No right acquired by user.

person with water except in accordance with the terms of a contract in writing.

PART V.

OF WATER RATES.

Liability when person using unauthorisedly cannot be identified.

31 If water supplied through a water-course be used in an unauthorised manner, and if the person by whose act or neglect such use has occurred cannot be identified,

the person on whose land such water flowed if such land derived benefit therefrom,

shall be liable to the charges made for such use.

Charges recoverable in addition to penalties.

32. All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

Decision of questions under section 31.

All questions under section 31 shall be decided by the Divisional Canal Officer, subject to an appeal to the Governor or such other appeal as may be provided under section 71.

Liability when water runs to waste.

[1]**32-A.** If water supplied through a water-course be suffered to run to waste and if after enquiry by the Divisional Canal Officer, the persons through whose act or neglect such water was suffered to run to waste, cannot be discovered, all the persons chargeable in respect of the water supplied through such water course shall be jointly liable for the charges made in respect of the water so wasted.

Charges on occupier for water, how determined.

33. The rates to be charged for canal water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules to be made by [2][the Government], and such occupiers as accept the water shall pay for it accordingly.

Occupier's rate.

A rate so charged shall be called the "Occupier's rate".

The rules hereinbefore referred to may prescribe and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier's rate, of tenants and of persons to whom tenants may have sub-let their lands or of proprietors and of persons

[1]Section 32-A added *vide* Act IV of 1977 published in Government Gazette dated 16th Chet 1977.

[2]See footnote under section 4.

to whom proprietors may have let the lands held by them in cultivating occupancy.

Owner's rate.

34. In addition to the occupier's rate, a rate to be called the "owner's rate" may be imposed, according to rules to be made by the Government on the owners of canal-irrigated lands, in respect of the benefit which they derive from such irrigation.

Amount of owner's rate.

35. The owner's rate shall not exceed the sum which, under the rules for the time being in force for the assessment of land revenue, might be assessed on such land on account of the increase in the annual value or production thereof caused by the canal-irrigation. And, for the purposes of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

[1]**35-A**. During the currency of settlemenet operations, occupier's rate shall not be charged upon land which has already been assessed at *nehri* rates.

Owner's rate when not chargeable.

36. No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land revenue at irrigation rates, during the currency of such assessment without the sanction of the Government.

When occupier to pay both occupier's rate and owner's rate.

37. If such land is in the occupation of the owner or in the occupation of a tenant who is not liable to enhanced rent on account of the value of produce of land or productive power of land having increased due to irrigation, such owner or tenant shall pay occupier's rate as well as owner's rate.

Power to make rules for apportionment of owner's rate.

38. In the case of an occupancy tenant, the Government shall have power to make rules for apportionment of owner's rate between such tenant and his land lord rateably taking into consideration the right to profits accruing to each from such land.

When owner to pay owner's rate.

39. If the owner of land is not in occupation but he has the right to charge enhanced rent from the occupier on account of the value of the produce of land or productive power of land having increased due to irrigation or when at the time of fixing rent the land was irrigated by canal, the owner shall pay the owner's rate.

[1]In section 35-A word "Nehri" substituted for "Abi" *vide* Act IV of 1977 published in Government Gazette dated 16th Chet 1977.

40. If on the plea of revised settlement operations a suit for enhancement of rent may be based, then in case of any land irrigated by a canal, the landlord shall be entitled to charge enhanced rent from an occupancy tenant of such land in the same manner as if such revised settlement operations had taken place according to which land revenue was enhanced on such land.

Effect of introduction of canal irrigation on landlord's right to enhanced rent.

41. Where a water rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of other charges on such rents or profits.

Water rate by whom payable when charged on land held by several owners.

RECOVERY OF CHARGES.

42. Any sum lawfully due under this part, and certified by the Divisional Canal Officer to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Governor from the person liable for the same as if it were an arrear of land revenue.

Certified dues recoverable as land revenue.

43. The Divisional Canal Officer or the Governor may enter into an agreement with any person for the collection and payment to [1][the Government] by such person of any sum payable under this Act by a third party.

Power to contract for collection of canal dues.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal-water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Governor under section 42, and if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Governor from such third party.

44. The Governor may require the lambardar, or person under engagement to pay the land revenue of any estate, to collect and pay any sums payable under this Act

Lambardars may be required to collect canal dues.

[1] See footnote under section 4.

by a third party, in respect of any land or water in such estate.

Such sums shall be recoverable by the Wazir-i-Wazarat as if they were arrears of land revenue due in respect of the defaulter's share in such estate;

and for the purpose of collecting such sums from the subordinate zamindars, *raiyats*, tenants or sub-tenants such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land revenue. [1][The Government] shall provide—

(a) for remunerating persons collecting sums under this section at the rate of 5 per cent. on the sum collected;

(b) for indemnifying them against expenses properly incurred by them in such collection; or

(c) for both such purposes.

Fines excluded from sections 42, 43, 44.

45. Nothing in sections 42, 43 or 44 applies to fines.

PART VI.

OF CANAL NAVIGATION.

Detainer of vessels violating rules.

46. Any vessel entering or navigating any canal contrary to the rules made in that behalf by the Government or so as to cause danger to the canal or the other vessels therein, may be removed or detained, or removed and detained, by the Divisional Canal Officer, or by other person duly authorised in this behalf.

Liability of owners of vessels causing damage.

The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to the Government such sum as the Divisional Canal Officer, with the approval of the State Engineer, determines to be necessary to defray the expenses of repairing such damage, or of such removal or detention, as the case may be.

Recovery of fines for offences in navigating canals.

47. Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person in charge of any vessel, for any offence in respect of the navigation of such vessel may be recovered either in the manner prescribed by the Code of Criminal Procedure or, if the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

[1]See footnote under section 4.

48. If any charge due under the provisions of this part in respcet of any vessel is not paid on the demand to the person authorised to collect the same, the Divisional Canal Officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize and detain vessel on failure to pay charges.

49. If any charge due under the provisions of this part in respect of any cargo or goods carried in a State vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the person authorised to collect the same, the Divisional Canal Officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

Power to seize cargo or goods if charges due therein are not paid.

50. Within a reasonable time after any seizure under section 48 or section 49 the said Canal Officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it, as may be necessary, will, on a day to be named in the notice, but no sooner than 15 days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

Procedure for recovery of such charges after seizure.

And, if such claim be not so discharged, the said Canal Officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be, suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the sale, shall be made over to the owner or person incharge of the property, seized.

51. If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal or stored on or in lands or warehouses occupied for the purposes of a canal, be left unclaimed for a period of one month the Divisional Canal Officer may take possession of the same.

Procedure in respect of vessels abondoned and goods unclaimed.

The officer so taking possession may publish a notice that if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not

sooner than thirty days from the date of such notice, he will sell the same; and if such vessel, contents, cargo or goods be not so claimed, he may, at any time after the day named in the notice, proceed to sell the same.

Disposal of proceeds of sale.

The said vessel and its contents, and the said cargo or goods if unsold, or, if a sale has taken place, the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional Canal Officer on account of taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal Officer.

If the Divisional Canal Officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid and the proceeds to be paid into the District treasury, there to be held until the right thereto be decided by a Court of competent jurisdiction.

PART VII.

OF DRAINAGE.

Power to prohibit obstructions or order their removal.

52. Whenever it appears to [1][the Government] that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage channel, [1][the Government] may, by notification published in the Government Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal of other modification of such obstruction.

Thereupon so much of the said river, stream or drainage channel as is comprised within such limits shall be held to be a drainage work as defined in section 2.

Power to remove obstructions after prohibition.

53. The Divisional Canal Officer, or other person authorised by [1][the Government] in that behalf, may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said Canal Officer may himself remove or mofidy obstructions; and if the person to whom the order was issued does not, when called upon, pay the expenses in-

[1]See footnote under section 4.

volved in such removal or modification, such expenses shall be recoverable by the Governor from him or his representative-in-interest as an arrear of land revenue.

Preparation of schemes for works of improvement.

54. Whenever it appears to [1][the Government] that any drainage works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

[1][the Government] may cause a scheme for such drainage works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which [1][the Government] proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

Powers of persons employed on such schemes.

55. The persons authorised by [1][the Government] to draw up such scheme may exercise all or any of the powers conferred on Canal Officers by section 12.

Rate on lands benefited by works.

56. An annual rate, in respect of such scheme, may be charged, according to rules to be made by [1][the Government], on the owners of all lands which shall, in the manner prescribed by such rules, be determined to be so chargeable.

Such rate shall be fixed, as nearly as possible, so as not to exceed either of the following limits:—

(1) six per cent. per annum on the first cost of the said works adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom the estimated income, if any, derived from the works excluding the said rate;

(2) in the case of agricultural land, the sum which, under the rules then in force for the assessment of land revenue, might be assessed on such land on account of the increase of the annual value or produce thereof caused by the drainage work.

Such rate may be varied from time to time, within such maximum by [1][the Government].

So far as any defect to be remedied is due to any canal, water-course, road or other work or obstruction, constructed or caused by [1][the Government] or by any person, a proportionate share of the cost of the drainage works required for the remedy of the said defect shall be borne by [1][the Government] or such person, as the case may.

[1]See footnote under section 4.

57. Any such drainage rate may be collected and recovered in manner provided by sections 42, 43 and 44 for the collection and recovery of water-rates.

Recovery of ate.

58. Whenever, in pursuance of a notification made under section 52, any obstruction is removed or modified,

Disposal of claims to compensation.

or whenever any drainage work is carried out under section 54, all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Wazir-i-Wazarat and he shall deal with the same in the manner provided in section 8.

59. No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Governor is satisfied that the claimant had sufficient cause for not making the claim within such period.

Limitation of such claims.

PART VIII.

OF OBTAINING LABOUR FOR CANALS AND DRAINAGE WORKS.

60. For the purposes referred to in this part the word "labourer" includes persons who exercise any handicraft specified in rules to be made in that behalf by [1][the Government.]

Definition of labourer.

61. Whenever it appears to a Divisional Canal Officer duly authorised by [1][the Government] that, unless some work is immediately executed, such serious damage will happen to any canal or drainage work as to cause sudden and extensive public injury,

Procedure for obtaining labour for works urgently required.

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury,

the said officer may require any lambardar of a village to furnish as many labourers (not exceeding the number which is proper under the circumstances) as to the said officer seems necessary for the immediate execution of such work.

The Governor in consultation with the State Engineer shall fix, and may from time to time alter, the rates to be paid to any such labourers:

[1]See footnote under section 4.

Provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourer, the payment shall continue for the whole period during which he is, in consequence of the provisions of this Part, prevented from following his ordinary occupation.

[1][The Government] may direct that the provisions of this part shall apply, either permanently or temporarily (as the case may be) to any district or part of a district for the purpose of effecting necessary annual silt clearances, or to prevent the proper operation of a canal or drainage work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

Liability of labourers under requisition.

62. When any requisition has been made on any person mentioned in section 61, every labourer ordinarily residing within the village or estate of such person shall be liable to supply, and to continue to supply, his labour for the purposes aforesaid.

PART IX.

OF JURISDICTION.

Jurisdiction under this Act.

63. Except where herein otherwise provided, all claims against Government in respect of anything done under this Act shall be disposed of by the Governor subject to the appeal to the Revenue Minister.

Settlement of differences as to mutual rights and liabilities of persons interested in water-course.

64. Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of water-course, any such person may apply in writing to the Divisional Canal Officer stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to enquire into the said matter. And after such enquiry he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Governor who shall thereupon enquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made and shall thereafter remain in force until set aside by the decree of a civil court.

[1]See footnote under section 4.

65. Any officer empowered under this Act to conduct any enquiry may exercise all such powers connected with the summoning and examining of witnesses as are conferred on Civil Courts by the Code of Civil Procedure, and every such enquiry shall be deemed a judicial proceeding.

Power to summon and examine witnesses

PART X.

OF OFFENCES AND PENALTIES.

66. Whoever, without proper authority and voluntarily, does any of the acts following, that is to say:—

Offences under Act.

(1) damages, alters, enlarges or obstructs any canal or drainage work;

(2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage work;

(3) interferes with or alters the flow of water in any river or stream, so as to endanger, damage or render less useful any canal or drainage work;

(4) being responsible for the maintenance of a water-course, or using a water-course, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorised distribution of the water therefrom, or uses such water in an unauthorised manner;

(5) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(6) causes any vessel to enter or navigate any canal contrary to the rules for the time being prescribed by [1][the Government] for entering or navigating such canal;

(7) while navigating on any canal, neglects to take proper precautions for the safety of the canal, and of vessels thereon;

(8) being liable to furnish labourers under Part VIII of this Act, fails without reasonable cause, to supply or to assist in supplying the labourers required of him;

(9) being a labourer liable to supply his labour under Part VIII of this Act, neglects, without reasonable cause, so to supply, and to continue to supply, his labour;

(10) destroys or moves any level-mark or water-gauge fixed by the authority of a public servant;

(11) passes, or causes animals or vehicles to pass, on or across any of the works, banks or channels or a canal or

[1]See footnote under section 4.

drainage work, contrary to rules made under this Act, after he has been desired to desist therefrom;

(12) violates any rule made under this Act, for breach whereof a penalty may be incurred,

shall be liable on ocnviction before a Magistrate of such class as [1][the Government] directs in this behalf, to a fine not exceeding fifty rupees, or to imprisonment not exceeding one month, or to both.

Penalty.

67. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act.

Saving of prosecution under other laws

Provided that no person shall be punished twice for the same offence.

68. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to the person injured by such offence.

Compensation to person injured.

69. Any person in charge of or employed upon any canal or drainage work may remove from the lands or building belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest Police Station, to be dealt with according to law, any person who, within his view, commits any of the following offences:—

Power to arrest without warrant.

(1) wilfully damages or obstructs any canal or drainage work;

(2) without proper authority interferes with the supply or flow of water in or from any canal or drainage work, or in any river or stream, so as to endanger, damage or render less useful any canal or drainage work.

70. In this Part the nord "canal" shall (unless there be somethieg repugnant in the subject or context) be deemed to include also all lands occupied by Government for purposes of canals, and all buildings, machinery, fences, gates and other erections, trees, crops, plantations or other produce occupied by or belonging to Government upon such lands.

Definition of canals.

PART XI.

OF SUBSIDIARY RULES.

71. [1][The Government] may from time to time make rules to regulate the following matters:—

Power to make, alter and cancel rules.

[1]See footnote under section 4.

(1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeals, shall be appealable;

(3) the persons by whom, and the time, place or manner at or in which anything for the doing of which provision is made under this Act, shall be done;

(4) the amount of any charge made under this Act;

(5) generally to carry out the provisions of this Act.

[1][The Government] may from time to time alter or cancel any rules so made.

Such rules, alterations and cancelments shall be published in the Government Gazette, and shall thereupon have the force of law.

Publication of rules.

THE JAMMU AND KASHMIR SILK PROTECTION ACT, 1964.

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[*Translated from original in Urdu published in Government Gazette dated 29th Assuj 1964.*]

THE JAMMU AND KASHMIR SILK PROTECTION ACT, 1964.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's Letter No. 82-G, dated 14th August 1907.*)

NOTIFICATION NO. 14.

Dated the 15th Assuj 1964.

WHEREAS it is expedient to make law forbidding the unauthorised sale and keeping in possesion of silk cocoons and

[1]See footnote under section 4.

silk worms and the retention and keeping in possession of all kinds of Kashmir silk, the following Act is hereby issued:—

1. This Act shall be called the Kashmir Silk Protection Act, 1964, and shall extend to the whole of the Jammu and Kashmir State territory.

2. The words (i) silk worm rearers, (ii) silk worm egg, (iii) silk cocoon and raw Kashmir silk shall have the same meaning as those which are generally assigned to them in the Jammu and Kashmir State.

Explanation.—Raw silk includes "Gudar".

3. If any silk worm rearer appointed by the Kashmir Sericulture Department, at the instance of the Director Sericulture or the persons appointed by the Director in this behalf, sells to any person or uses in any other manner the silk coccon reared by him which is in his possession, or the seeds of such silk entrusted to him for the purpose of rearing or if any person deliberately neglects to return all those silk cocoons reared by him or neglects to return on demand such seed in his possession to the said Director or to persons appointed by the Director in this behalf, he shall, on being convicted, be punished with imprisonment of either description which may extend to three years or with fine or with both.

4. If any person receives the silk cocoons from any silk worm rearer without the permission of the Director, or is found to be in possession of the silk cocoons or silk seeds without the permission of the Director or of the person appointed by him in this behalf, he shall be presumed to have received that stolen property knowing and believing it to be as such and may be prosecuted under [1]section 311, Ranbir Dand Bidhi.

5. If any person acquires such raw silk manufactured from those cocoons which are reared by the Kashmir Sericulture Department, without the sanction of the Director or of the persons empowered by him in this behalf, or is found to be in possession of such silk, he shall, on conviction, be punished with imprisonment of either description which may extend to three years, or with fine or with both.

6. All offences in contravention of this Act shall be tried in the Criminal Courts in accordance with the Criminal Law and Practice in force in the State.

[1]Section 411 Ranbir Penal Code.

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37 Grant of rent free land to British Government for timber depots.

THE RIVER RULES, 1965.

(Sanctioned by His Highness the Moharaja Sahib Bahadur under order, dated 16th December 1907, quoted in endorsement No 8,996, dated 11th January 1908, from the Chief Minister to the Foreign Minister of the Jammu and Kashmir Government.)

SECTION I.

INTRODUCTORY.

Commencement and repeal of previous Rules.

1. These Rules shall come into force in the territories of the Jammu and Kashmir Government from 1st Har 1965, and from this date the River Rules passed by the State Council on 29th Poh 1956, and the Chenab River Rules passed on 31st January 1891, shall be repealed. But all orders and procedure in force under those previous Rules shall, so far as they are consistent with these Rules, be deemed to have been made hereunder.

Scope of the Rules.

2. These Rules shall apply to all rivers in the Jammu and Kashmir State.

Definitions.

3. In these Rules unless there be something repugnant in the subject or context:—

"Forest Officer" means any person whom His Highness the Maharaja Bahadur or the Chief Conservator of Forests empowered by His Highness the Maharaja Bahadur in this behalf may, from time to time appoint by name, or as holding an office to carry out all or any of the purposes of these Rules, to do anything required by these Rules to be done by a Forest Officer.

"Timber" includes trees when they have fallen or have been felled, and all wood, whether cut up or fashioned or hollowed out for any purpose or not.

"River Offence" means an offence punishable under these Rules.

"River" includes streams, canals, creeks and other channels, natural or artificial.

SECTION II.

REGISTRATION OF TIMBER PROPERTY MARKS.

Registration of timber property marks

4. All persons wishing to float, raft or otherwise convey timber by any river, shall register at the office of the Forest Officer in charge of the Division to which the control of the river pertains, the mark or marks which indicate their proprietary rights in such timber. A registration fee of five rupees shall be payable for each such mark provided that if the marks registered by any one owner or firm of owners exceed one, the said fee shall be ten rupees for each mark; provided that no person or firm may register more than one mark on either of the Jhelum, Chenab and Ravi river systems without the sanction of the Conservator of Forests within whose jurisdiction the river lies.

Timber property marks must be distinctive.

5. No person shall be allowed to register a mark already registered in favour of another person in the Jammu and Kashmir Government territory or known to be registered in favour of another person in British territory nor any mark used by the Jammu and Kashmir Forest Department or the British Government and the Forest Officer in charge of the Division is authorised to refuse registration of any mark which in his judgment so closely resembles a mark already registered in favour of any such other person or used by the Jammu and Kashmir Forest Department or by the British Government as to be easily altered into such mark or *vice versa*.

Reciprocal and prompt interchange of copies of entries in their property mark register between the Jammu and Kashmir and British Divisional Officer is necessary.

Registration to hold good for three years.

[1]**6.** Every registration under these Rules shall hold good for three years from the date of the registration. A certificate showing the mark or marks registered, the date of registra-

[1]Rule 6 substituted (*vide* the Hon'ble Prime Minister's endorsement No. G. B. 716, dated the 12th March, 1934) published in Government Gazette dated 16th Chet 1990,

tion, the period for which it holds good and the fees charged shall be given to every person registering his mark or marks.

Temporary timber property marks.

7. (i) Notwithstanding anything contained in the foregoing Rules:—

(a) temporary property marks, for special consignments of timber to be transported by water, may be registered by the Forest Officer in charge of the Division to which the control of the river pertains, or with the written permission of such forest officer, by the River Range Officer;

(b) such registration shall be made under such conditions as the Conservator of Forests may from time to time direct;

(c) a fee of eight annas shall be payable for every separate mark so registered; and

(d) every such registration shall hold good for three months only from the date of the registration.

(ii) Rule 5 of the foregoing Rules shall have effect in the case of every registration made under this Rule.

Exemptions from payment of registration fees.

8. No fee shall be levied for registering the property marks used on its timber by the British Government so long as the latter levies no fees for registering the timber property marks used by the Jammu and Kashmir Government nor for registering the property marks used on their timber by other Departments of the Jammu and Kashmir Government.

SECTION III.

ON TIMBER IN TRANSIT BY WATER.

Permission to collect timber necessary.

9. It shall be incumbent on all persons who, having once launched their timber in any river, may be desirous to collect the same in Kashmir territory, to apply to the Forest Officer in charge of the Division to which the control of the river pertains, for permission in writing to collect the timber in those depots in which the collection is permitted.

Timber belonging to the British Forest Department shall be exempted from this Rule.

10. The Forest Officer in charge of the Division shall publicly notify the names of the depots on each river under his charge at which the collection of timber shall be permitted.

Rafting of timber without a pass prohibited.

11. No person shall raft or otherwise convey by river any timber which has been collected at any of the depots referred to above, without first obtaining a pass from the Fores Officer in charge of the Division or a Forest

Officer empowered by the former in this behalf. Such pass shall show the following particulars:—

(1) Name of owner and raftsman in charge.

(2) Description and number of logs and pieces.

(3) Measurements in cubic feet, and estimated value of the timber.

(4) Timber property marks borne on the timber.

(5) Place of destination.

(6) Time for which the pass shall remain in force.

(7) Names of places where the timber may be stopped for examination.

(8) Amount of rafting fee and the place where it shall be collected.

No pass shall be issued for any unmarked timber with the exception of small pieces of firewood in boats or loads of bamboos.

Scale of rafting fees to be notified.

12. The Forest Officer issuing a pass shall levy fees according to the scale in force at the time under the orders of the Chief Conservator of Forests who shall from time to time publicly notify a reasonable scale of fees according to the local circumstances of each river or place, but no such scale, shall, without previous sanction of [1][the Government] exceed one anna per piece.

13. Such fees shall not be levied on timber rafted by Public Departments of the Jammu and Kashmir Government for Jammu and Kashmir Government purposes, nor on timber belonging to the Punjab Government, so long as the latter levies no rafting fees on timber owned by the Jammu and Kashmir Government. Nor shall they be levied for the first time on timber released from a drift timber depot under Rules 28, 29 nor on any timber sold from a Jammu and Kashmir Government sale depot, provided it is conveyed by water within three months from the date of release or sale without alteration of shape.

[2]"Forest lessees of the the State and of the Illaqas of Poonch and Chenani shall also be exempt from payment of rafting fees".

Production of rafting passes for inspection.

14. It shall be incumbent on every person to whom such pass has been granted to produce it without demur for inspection by any duly authorised Forest Officer who may wish to see it and no person shall be entitled to raft or convey by

[1]In Rules 12, 33 and 35 "the Government" substituted for His Highness the Maharaja Bahadur *vide* Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.

[2]Rule 13 Para 2 added *vide* Council order No. 514 of 1935 published in Government Gazette dated 24th Sawan 1992.

water any timber by virtue of a pass which he does not himself hold, but which is or is stated to be in the hands of some other person. In the event of the pass not being produced on demand, the Forest Officer may detain the timber, pending orders from the Conservator of Forests, within whose jurisdiction the river lies.

Extension of time expired passes.

15. In the event of the timber mentioned in the pass as that for which it shall remain in force having expired before the arrival of timber covered thereby at its destination, the Forest Officer in charge of the Division may extend the period for which the pass shall be valid for such time as he may think proper at a charge not exceeding one fourth of the fees chargeable under Rule 12.

Deposit of loose timber near the river prohibited.

16. All rafts and timber lying in the river or on its banks shall be securely fastened to the bank in such a manner as the Forest Officer to whom the application for a pass is made may direct, until a pass is issued, for their removal.

Interference with timber in transit prohibited.

17. No person shall, without the permission in writing of the Forest Officer in charge of the Division, cut up, burn, move, conceal, mark, efface, or alter any marks on, sell or in any way interfere with any timber while in transit on any river. Whenever such permission is granted, the place at which only it shall take effect shall be specified and such other conditions as may be considered necessary shall be entered.

Return of rafting passes.

18. When the timber arrives at its destination, the pass shall be returned to the Forest Officer stationed at the place where the timber was last examined, if the place of destination be situated beyond the lowest post down to which the Jammu and Kashmir Government timber operations on the river are in force, the pass must be given up before leaving the post after such examination.

SECTION IV.

COLLECTION OF "DRIFT" TIMBER.

Interpretation of "drift timber."

19. By the term "Drift timber" is meant all timber of the following descriptions:—

(i) The collection of which has not been authorised under Rule 9.

(ii) In transit below the highest transit depot without being covered by the pass prescribed in Rule 11.

(iii) Bearing marks not registered in the Jammu and Kashmir Government Forest Offices.

(iv) Bearing indecipherable or diverse marks.

(v) Bearing marks that have been tampered with.

(vi) All unmarked timber on the following, so far as such flow through, or border Jammu and Kashmir territory:—

(a) The main stream and banks of the Jhelum River, below its junction with the Kunhar river below Domel.

(b) The main stream and banks of the Chenab River, throughout its course.

(c) The main stream and banks of the Ravi river, throughout its course.

NOTE.—Banks include the bed of a river up to its highest flood level.

Drift timber property of Jammu and Kashmir Government until title established thereto.

20. All drift timber found floating, stranded or sunk in the territory of the Jammu and Kashmir Government within a direct distance of five miles from the bank of the cold weather main channel of the river shall be considered the property of the Jammu and Kashmir Government, until any other claim is established there to. Such timber shall be secured and collected by the Jammu and Kashmir Forest Department and stored at the depots appointed for the collection of drift timber.

Drift timber to be distinctly marked.

21. Drift timber as defined in Rule 19(i) and (iii) to (vi) wherever found in Jammu and Kashmir territory shall be impressed with a mark which should show that it is drift timber under the meaning of Rule 19, and also where it has been marked as such.

Notification of drift timber depots.

22. The Forest Officer in charge of the Division shall publicly notify the names of the depots at which drift timber (referred to in Rule 20) shall be stored on the river under his charge. Copies of such notifications will be sent to the Punjab Forest Officers concerned.

Periodical notification of drift timber collected.

23. The Forest Officer in charge of the Division shall from time to time publicly notify the drift timber collected at each such depot showing marks, quantity and description of timber and the salvage due thereon.

Calculation of salvage fees.

24. The amounts payable for the salvage of drift timber at any drift timber depot shall be the same as the amounts payable according to the contract for the salvage of the Jammu and Kashmir Govern-

ment timber in force at the time of the delivery of the salved timber at such depot, or in the absence of any such contract and in any case not provided for by such contract, the Conservator shall fix a rate for salving with due regard to the circumstances of each case.

Exemption of super-marked British timber from salvage fees.

25. Any timber so collected and found to be marked with the property mark of the British Government and supermarked with the Jammu and Kashmir Government drift timber mark shall be made over to the British Forest Officials without charge of any salvage fees, provided reciprocal action is taken by the latter.

Lodging of claims to ownership of drift timber.

26. Any person desiring to claim any such drift timber should within two months of the date of the notice, file in the office of the Forest Officer in charge of the Division a petition in writing setting forth his reasons in support of his claim.

Enquiry into claims.

27. On receipt of any such claim within the term prescribed, the Forest Officer in charge of the Division shall make enquiry into the validity of the claim, and record his order thereon within one month after the expiry of the period laid down in the notice issued under Rule 23.

Settlement of claims.

28. The Forest Officer in charge of the Division may release the timber in favour of any claimant who establishes his claim or he may reject any claim recording the reasons for his decision in his order. If such timber is claimed by more than one person, the Forest Officer in charge of the Division may either deliver the same to any of such claimants whom he deems entitled thereto, recording his reasons in his order, or may refer the claimants to the Civil Courts, retaining possession of the timber pending the receipt of an order from such Court for its disposal.

Appeal against order of settlement.

29. Any person whose claim has been rejected by the Forest Officer in charge of the Division may appeal against the said order in the Civil Court within three months of the date of the order and until a decision has been communicated to the Forest Officer in charge of the Division on such appeal, the timber in question, if not already released in favour of another claimant under Rule 28, shall remain in the custody of the Jammu and Kashmir Forest Department.

Claim for damage not admissible.

30. No person shall have any right to claim damages on account of any delay or loss arising in consequence of the orders issued by the Forest Officer in charge of the Division under Rules 27, 28 and 29

unless he causes such loss or damage negligently, maliciously or fraudulently.

Disposal of unclaimed timber.

31. All timber (i) for which no claim has been preferred under Rule 26 or (ii) the claim for which having been instituted has been rejected under Rule 28 and no appeal has been filed within the period specified under Rule 29 shall be considered the property of the Jammu and Kashmir Government without further room for dispute. Similarly if any timber has been released in favour of any person under Rules 28 or 29, it shall be considered his property.

Drift timber not attachable until released in favour of a claiment.

32. No Department of the Jammu and Kashmir Government, nor the Civil or Criminal Courts, shall pass any orders attaching any drift timber until it has been released in favour of some person under Rule 28 or 29 or until a decision has been recorded in favour of some person in the Civil Court under the same Rules.

Payment of all dues necessary before release.

33. Irrespective of any orders passed under Rules 28 or 29 relative to the release of any drift timber, no person shall be permitted to remove any such timber until he has paid to the Forest Officer in charge of the Division all the sums due thereon on account of salvage and other expenses incurred on collection of the said timber by the Jammu and Kashmir Forest Department or depot rent in accordance with the rules sanctioned by [1][the Government].

Penalties.

34. Whoever infringes any provision of these Rules shall be punished for every such offence with imprisonment which may extend up to six months or with fine which may extend to five hundred rupees or with both.

Power to compound offence.

35. [1][The Government] may from time to time by notification in the Jammu and Kashmir Government Gazette, empower a Forest Officer by name, or as holding an office.

(a) To accept from any person against whom a reasonable suspicion exists that he has committed any river offence, a sum of money by way of compensation for the offence which such person is suspected to have committed upto a maximum of Rs. 50 (fifty) for each such offence.

[2](b) When any timber in respect to which a river offence has been committed has been seized to release the same on payment of the value thereof as estimated by such officer.

[1]See footnote under section 12.

[2]Rule 35 (*b*) substituted *vide* Revenue Department Notification No. 40, dated 29th September 1933 published in Government Gazette dated 20th Assuj 1990.

36. The Chief Conservator of Forests may issue from time to time the necessary orders to regulate working in accordance with the foregoing Rules.

Chief Conservator may issue orders for details of working.

37. The Jammu and Kashmir Government shall not levy any rent in respect of land occupied by the British Government for timber depots situated within Jammu and Kashmir territory, the British Government having similarly consented to forego the right to recover rent of lands held by the Jammu and Kashmir Government for the purpose of timber depots within British territory.

Grant of rent free land to British Government for timber depots.

[*Translated from original in Urdu published in Government Gazette dated 11th Poh 1968.* (*V*)].

NOTIFICATION.

PROHIBITING SALE OF MEAT AND LIQUOR IN PARMANDAL AND UTTARBAHNI.

Command of His Highness the Maharaja Sahib Bahadur.

We agree with the opinion expressed by the Chief Minister. Parmandal and Uttarbahni are the famous and sacred shrines of the Hindus. Sale of meat and liquor in these places has been prohibited from the time of late His Highness Maharaja Sahib Bahadur of revered memory. In conformity with the old practice, it is hereby ordered that sale of meat and liquor in both these places is prohibited in future also and the same may be notified.

28TH ASSUJ 1968.

THE SMALL CAUSE COURT ACT, 1968.

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THE SMALL CAUSE COURT ACT, 1968.

(*Sanctioned under His Highness the Maharaja Sahib Bahadur's Order No. 288 dated 2nd June 1911.*)

CHAPTER I.

PRELIMINARY.

Title.

1. This Act relates to the Court of Small Causes established in the town of Srinagar and its suburbs, and shall apply to any other Small Cause Court that may hereafter be established in any other town or towns within the territories of His Highness the Maharaja Sahib Bahaur, and shall be called the Small Cause Court Act for the Jammu and Kashmir State.

Commencement.

2. It shall come into force on the 1st day of Baisakh, 1968.

Jurisdiction of Srinagar Small Cause Court.

3. The jurisdiction of the Small Cause Court established at Srinagar in the Province of Kashmir, shall extend to the whole of the town of Srinagar, and its suburbs as specified in the schedule annexed herewith. The limits of the said jurisdiction may be extended from time to time by special orders of [1][the High Court.]

Savings.

4. Nothing in this Act shall be construed to affect any proceeding, before or after decree, in any suit, instituted before the commencement of this Act, or any local law or any special law, other than the Code of Civil Procedure.

Definition.

5. In this Act, unless there is something repugnant in the subject or context, [Court of Small Causes] means a Court of small causes consituted under this Act, and includes any person exercising jurisdiction under this Act in any such Court.

CHAPTER II.

CONSTITUTION OF COURTS OF SMALL CAUSES.

Jude.

6. [2][The Government] shall [3]"on the recommendation of High Court" appoint a judge for the said Court to be styled Judge of the Small

[1]In section 3 the words "the High Court" substituted for the words "His Highness" *vide* Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

[2]In sections 6, 7 (1), 8, 11 and 28 for words "His Highness the Maharaja Sahib Bahadur") the words "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[3]Inserted by notification 3-L/85 published in Government Gazette dated 8th Badon 1985.

Cause Court.

7. (1) [1][The Government] may [2]"on the recommendation of High Court", by order in writing, appoint an Additional Judge of the Small Cause Court.

(2) The Additional Judge, when appointed, shall discharge such of the functions of the Judge of that Court, as the Judge may assign to him, and in the discharge of those functions shall exercise the same powers as the Judge.

(3) The Judge may withdraw, from the Additional Judge, any business pending before him.

(4) When the Judge is absent, the Additional Judge may discharge all or any of the functions of the Judge.

8. A Judge or additional Judge of a Court of Small Causes may be suspended [3]"from office by the High Court subject to the confirmation of [1][the Government] and removed from office by [1][the Government] on the report of the High Court".

9. In case there are more than one Judges appointed, [3]"the High Court" may, by order in writing, direct that two Judges or a Judge and an Additional Judge of the Small Cause Court, shall sit together for the trial of such class or classes of of suits or applications cognizable by a Court of Small Causes as may be described in the order.

10. (1) If two Judges, or a Judge and an Additional Judge, sitting together under the last foregoing section, differ as to a question of law or usage having the force of law, or in construing a document the construction of which may affect the merits, they shall draw up and refer, for the decision of the High Court, a statement of the facts of the case and of the point on which they differ in opinion, and the provisions of Chapter XLVI of the Code of Civil Procedure shall apply to the reference.

Decision in case heard by a bench.

(2) If they differ on any matter other than a matter specified in sub-section (1), the opinion of the Judge who is senior in respect of date of appointment as Judge of a Court of Small Causes, or, if one of them is an Additional Judge, then the opinion of the Judge sitting with him, shall prevail.

(3) For the purposes of sub-section (2) a Judge permanently appointed shall be deemed to be senior to an officiating Judge.

[1]See footnote 2 under section 6
[2]See footnote 3 under section 6
[3]Substituted by Notification 3-L 85 published in Goverment Gazetted dated 8th Bhadon 1995.

11. (1) [1][The Government] may [2]"on the recommendation of the High Court" appoint to a Court of Small Causes an officer to be called the Registrar of the Court.

Registrar.

(2) Where a Registrar is appointed, he shall be the chief ministerial officer of the Court.

(3) [3]"The Registrar shall have, within the local limits of the jurisdiction of the Court, the jurisdiction of a Judge of a Court of Small Causes for the trial of suits of which the value does not exceed twenty rupees."

(4) The Registrar shall try such suits cognizable by him as the Judge may, by general or special order, direct.

(5) A Registrar may [2]"on the recommendation of the High Court" be suspended from office by the High Court subject to the confirmation of His Highness and removed from office by His Highness on the report of the High Court."

12. [4][The Judge Small Cause Court shall appoint, suspend, dismiss, grant leave and fine all menials of his court. He shall also have power to grant casual leave to and fine clerks of his court. The power to transfer, appoint, suspend, dismiss and grant leave (excepting causal leave) to such clerks shall be exercised by the District Judge in consulation with the Judge Small Cause Court].

13. (1) The ministerial officers of a Court of Small Causes shall, in addition to any duties mentioned in this Act, or in any other enactment for the time being in force, as duties which are or may be imposed on any of them, discharge such duties of a ministerial nature as the Judge directs.

Duties of Ministerial officers.

(2) The High Court may make rules consistent with this Act and with any other enactment for the time being in force, conferring and imposing on the ministerial officers of a Court of Small Causes such powers and duties as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed are to be exercised and performed.

CHAPTER III.

JURISDICTION OF COURTS OF SMALL CAUSES.

14. (1) A Court of Small Causes shall not take cognizance of the suits specified in the 2nd schedule as suits excepted from the cognizance

Cognizance of suits by Courts of Small Causes.

[1]See footnote under section 6.
[2]Inserted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.
[3]Substituted by Notification 3-L 84 published in Government Gazette dated 27th Baisakh 1984.
[4]Section 12 substituted *vide* chief Minister Letter No. 531/P-25-15 dated 18th May, 1915 published in Government Gazette dated 8th Bhadon 1972 (V).

of a Court of Small Causes.

(2) Subject to the exceptions specified in that schedule and to the provisions of any enactment for the time being in force, all suits of a civil nature of which the value does not exceed five hundred rupees shall be cognizable by a Court of Small Causes.

(3) Subject as aforesaid, [1][the High Court] may, by order in writing, direct that all suits of a civil nature of which the value does not exceed one thousand rupees shall be cognizable by a Court of Small Causes mentioned in the order.

Exclusive jurisdiction of Cuorts of Small Causes.

15. Save as expressly provided by this Act or by any other enactment for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable.

CHAPTER IV.

PRACTICE AND PROCEDURE.

Application of the Code of Civil Procedure.

16. (1) [2]"The procedure prescribed in the Code of Civil Procedure, 1977, shall, save in so far as is otherwise provided by that Code or by this Act", be the procedure followed in a Court of Small Causes in all suits cognizable by it, and in all proceedings arising out of such suits:

Provided that an applicant for an order to set aside a decree passed *ex parte* or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give security to the satisfaction of the Court for the performance of the decree or compliance with the judgment, as the Court may direct.

(2) Where a person has become liable as surety under the proviso to sub-section (1), the security may be realised in manner provided by section [2][145] of the Code of Civil Procedure, [3][1977]

Trial of suits by Registrar.

17. (1) Suits cognizable by the Registrar under section 11 sub-sections (3) and (4), shall be tried by him and decrees passed therein shall be executed by him, in like manner in all

[1]Substituted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985 for the words "His Highness the Maharaja Sahib Bahadur".

[2]Substituted by Regulation 9 of 1988 published in Government Gazette dated 18th Har 1988.

[3]Added by Regulation 9 of 1988 published in Government Gazetted dated 18th Har 1988.

respects as the Judge might try the suits, and execute the decrees, respectively.

(2) The Judge may transfer to his own file, or to that of the Additional Judge if an Additional Judge has been appointed, any suit or other proceeding pending on the file of the Registrar.

Admission, return and rejection of plaints by Registar.

18. (1) When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar may admit a plaint, or return or reject a plaint for any reason for which the Judge might return or reject it.

Proviso.

Until a Registrar is appointed the Reader of the Court may admit a plaint, but shall not return or reject the same.

(2) The Judge may, of his own motion, or on the application of a party, return or reject a plaint which has been admitted by the Registrar or the Reader, or admit a plaint which has been returned or rejected by the Registrar;

Provided that where a party applies for the return or rejection or the admission of a plaint under this sub-section, and his application is not made at the first sitting of the Judge after the day on which the Registrar or Reader admitted, or the Registrar returned or rejected, the plaint, the Judge shall dismiss the application, unless the applicant satisfies him that there was sufficient cause for not making the application at that sitting.

Passing of decrees by Registrar on admission.

19. (1) If, before the date appointed for the hearing of a suit, the defendant or his agent duly authorized in that behalf appears before the Registrar and admits the plaintiff's claim, the Registrar may, if the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, pass against the defendant, upon the admission, a decree, which shall have the same effect as a decree passed by the Judge.

(2) Where a decree has been passed by the Registrar under sub-section (1), the Judge may grant an application for review of judgment, and re-hear the suit, on the same conditions, on the same grounds and in the same manner, as if the decree had been passed by himself.

Execution of decrees by Registrar.

20. (1) If, the Judge is absent, and an Additional Judge has not been appointed or, having been appointed, is absent, the Registrar may, subject to any instructions which he may have received from the Judge or, with respect to decrees or orders made by an Additional Judge, from the Additional Judge, make any orders

in respect of applications for the execution of decrees and orders made by the Court of which he is Registrar, or sent to that Court for execution, which the Judge might make under this Act.

(2) The Judge, in the case of any decree or order with respect to the execution of which the Registrar has made an order under sub-section (1), or the Additional Judge, in the case of any such decree or order which has been made by himself, and with respect to which proceedings have not been taken by he Judge under this sub-section, may of his own motion, or on application made by a party within 15 days from the date of the order of the Registrar or of the execution of any process issued in pursuance of that order, reverse or modify the order.

(3) The period of fifteen days mentioned in sub-section (2) shall be computed in accordance with the provisions of the State law of Limitation, as though the application of the party were an application for review of judgment

Adjournment of cases by chief ministerial officer.

21. When the Judge of a Court of Small Causes is absent, and an Additional Judge has not been appointed or, having been appointed, is also absent, the Registrar or other chief ministerial officer of the Court may exercise from time to time the power which the Court possesses of adjourning the hearing of any suit or other proceeding, and fix a day for the further hearing thereof.

Return of plaints in suits involving questions of title.

22. (1) Notwithstanding anything in the foregoing portion of this Act, when the right of a plaintiff and the relief claimed by him in a Court of small Causes depend upon the proof or disproof of a title to immovable property or other title which such a Court cannot finally determine, the Court may, at any stage of the proceedings, return the plaint to be presented to a Court having jurisdiction to determine the title.

(2) When a Court returns a plaint under sub-section (1), it shall comply with the provisions of the second paragraph of [1]section 57 of the Code of Civil Procedure, and make such order with respect to costs as it deems just; and the Court shall, for the purposes of the State Law of Limitation, be deemed to have been unable to entertain the suit by reason of a cause of a nature like to that of defect of jurisdiction.

[1]Order VII Rule 10 Code of Civil procedure, 1977.

23. Where an order specified in [1]"clause (h) or clause (b) of sub-section (1) of section 104 of the the Code of Civil Procedure, 1977" is made by a Court of Small Causes, an appeal therefrom shall lie to the [1]"District Court, on any ground on which an appeal from such order would lie under that section."

Appeals from certain order of Courts of Small Causes.

24. The High Court, for the purpose of satisfying itself that a decree or order made in any case decided by a Court of Small Causes was according to law, may call for the case and pass such order with respect thereto as it thinks fit.

Revision of decrees and orders of Courts of small Causes.

25. Save as provided by this Act, a decree or order made under the foregoing provisions of this Act by a Court of Small Causes shall be final.

Finality of decrees and orders.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

26. (1) A Court of Small Causes shall be subject to the administrative control of the Provincial Sadar Court and to the superintendence of the High Court, and shall:—

Subordination of Courts of Small Causes.

(a) keep such registers, books and accounts as the High Court from time to time prescribes, and

(b) comply with such requisitions as may be made by the Provincial Sadar Court, the High Court, or the Government for records, returns and statements in such form and manner as the authority making the requisition directs.

(2) The relation of the Sadar Court to a Court of Small Causes, with respect to administrative control, shall be the the same as that of the Sadar Court to the Court of Sub-Judge 1st grade.

27. A Court of Small Causes shall use a seal of such form and dimensions as are prescribed by the [2][High Court].

Seal.

28. [3][The Government] may, [4][on the recommendation of the High Court] by order in writing, abolish a Court of Small Causes.

Abolition of Courts of Small Causes.

[1]Words in inverted commas in section 23 substituted by Regulation 4 of 1988 published in Government Gazette dated 18th Har 1988.
[2]Substituted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.
[3]See footnote under section 6.
[4]Inserted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

29. (1) Nothing in this Act shall be construed to prevent the [1][High Court] from appointing a person who is a Judge or Additional Judge of a Court of Small Causes to be also a Judge of any other Civil Court or to be a Magistrate of any class or to hold any other public office.

Saving of power to appoint Judge of Court of Small Causes to other Office.

(2) When a Judge or additional Judge is so appointed, the ministerial officers of his Court shall, subject to any rules which the [1][High Court] may make in this behalf, be deemed to be ministerial officers appointed to aid him in the discharge of the duties of the other office.

[2]**29-A.** [1][The High Court] will be authorised to invest under this Act a District Judge, a Sub-Judge or a Munsiff with powers of a Judge of Small Cause Court to hear suits triable by a Small Cause Court of the value which [1]"the High Court" may deem proper and which will not be more than five hundred rupees and to exercise such powers within such local limits as [1][the High Court] may fix; [1][the High Court] may also withdraw powers so conferred.

30. (1) So much of Chapters III and IV as relates to—

Application of Act to Courts invested with Jurisdiction of Courts of small Causes.

(a) the nature of the suits cognizable by Courts of Small Causes,

(b) the exclusion of the jurisdiction of other Courts in those suits,

(c) the practice and procedure of Courts of Small Causes,

(d) appeal from certain orders of those Courts and revision of cases decided by them, and

(e) the finality of their decrees and orders subject to such appeal and revision as are provided by this Act,

applies to Courts invested by or under any enactment for the time being in force with the jurisdiction of a Court of Small Causes so far as regards the exercise of that jurisdiction by those Courts.

(2) Nothing in sub-section (1) with respect to Courts invested with the jurisdiction of a Court of Small Causes applies to suits instituted or proceedings commenced in those Courts before the date on which they were invested with that jurisdiction.

31. A Court invested with the jurisdiction of a Court of Small Causes with respect to the exercise of that jurisdiction and the same Court with respect to the exercise of its jurisdic-

Application of Act and Code to Court so invested.

[1]Substituted by Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.
[2]Section 29-A added by Ailan No. 15 dated 17th Sawan, 1970 published in Government Gazette dated 27th Sawan 1970.

tion in suits of a civil nature which are not cognizable by a Court of Small Causes, shall, for the purposes of this Act and the Code of Civil Procedure, be deemed to be different Courts.

Modification of Code as so applied.

32. Notwithstanding any thing in the last foregoing sections,—

(a) when, in exercise of the jurisdiction of a Court of Small Causes, a Court invested with that jurisdiction sends a decree for execution to itself as a Court having jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, or

(b) when a Court, in the exercise of its jurisdiction in suits of a civil nature which are not cognizable by a Court of Small Causes, sends a decree for execution to itself as a Court invested with the jurisdiction of a Court of Small Cuases,

the documents mentioned in [1]section 224 of the Code of Civil Procedure shall not be sent with the decree unless in any case the Court, by order in writing, requires them to be sent.

Continuance of proceedings of abolished Courts.

33. (1) Where a Court of Small Causes, or a Court invested with the jurisdiction of a Court of Small Causes, has from any cause ceased to have jurisdiction with respect to any case, any proceeding in relation to the case, whether before or after decree, which, if the Court had not ceased to have jurisdiction, might have been had therein, may be had in the Court which, if the suit out of which the proceeding has arisen were about to be instituted, would have jurisdiction to try the suit.

(2) Nothing in this section applies to cases for which special provision is made in the Code of Civil Procedure as extended to Courts of Small Causes or in any other enactment for the time being in force.

34. All orders required by this Act to be made in writing [2][* * *] shall be published in the Jammu and Kashmir Government Gazette.

SCHEDULE I.

List of Suburbs of the Town of Srinagar.

Mirbehri Villages Viz:

1. Naupura
2. Karapura

[1]O. 21 Rule 6 Civil Procedure Code, 1977.
[2]Words "by the Darbar" deleted by Notification No. 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

3. Nandpura
4. Buchhwara
5. Gupkar
6. Zithiyar
7. Nishat
8. Shalamar
9. Hazratbal
10. Nasim Bagh
11. Telbal
12. Gupt Ganga
13. Bren
14. Thid
15. Vicharnag
16. Bagat Barzala
17. Karalpura
18. Pand Chak
19. Pandrethan
20. Rambagh.

SCHEDULE II.

Suits excepted from the cognizance of a Court of Small Causes.

1. A suit concerning an act or order purporting to be done or made by the [1][Government], or by a Minister [2][* *] or by a Governor, in their official capacity, or concerning an act purporting to be done by any person by order of the [1][Government], or a Minister, a Governor or a Head of the Department;

2. a suit concerning an act purporting to be done by any person in pursuance of a judgment or order of a Court or of a Judicial Officer acting in the execution of his office;

3. a suit concerning an act or order purporting to be done or made by any other officer of the State in his official capacity, or by a Court of Wards, or by an officer of a Court of Wards in the execution of his office;

4. a suit for the possession of immoveable property or for the recovery of an interest in such property;

5. a suit for the partition of immovable property;

6. a suit by a mortgagee of immovable property for the foreclosure of the mortgage or for the sale of the property, or

[1]In para 1 and 8 "Government" substituted for "Darbar" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996. Note :—See also Notification No. 11-L/84 published in Government G zette dated 9th Magher 1984.

[2]In Para 1 words "of the Darbar" occurring between the word "Minister" and "or by" deleted *vide* Act No. X of 1996 published in Government Gazette dated 15th Bhadon 1996.

by a mortgagor of immovable property for the redemption of the mortgage;

7. a suit for the assessment, enhancement, abatement or apportionment of the rent of immovable property;

8. a suit for the recovery of rent, other than house-rent, unless the Judge of the Court of Small Causes has been expressly invested by the [1][Government] with authority to exercise jurisdiction with respect thereto;

9. a suit concerning the liability of land to be assessed to land revenue.

10. a suit to restrain waste;

11. a suit for the determination or enforcement of any other right to or interest in immovable property;

12. a suit for the possession of an hereditary office or of an inteest in such an office, including a suit to establish an exclusive or periodically recurring right to discharge the functions of an office;

13. a suit to enforce payment of the allowance or fees respectively called *Malikana and haq*, or of cesses or other dues when the cesses or dues are payable to a person by reason of his interest in immovable property, or in an hereditary office, or in a shrine or other religious institution;

14. a suit to recover from a person to whom compensation has been paid under the State Land Acquisition Act, the whole or any part of the compensation;

15. a suit for the specific performance or recission of a contract;

16. a suit for the rectification or cancellation of an instrument;

17. a suit to obtain an injunction;

18. a suit relating to a trust, including a suit to make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust, and a suit by a co-trustee to enforce against the estate of a deceased trustee a claim for contribution;

19. a suit for a declaratory decree, not being a suit instituted under section [2]283 or section [3]332 of the Code of Civil Procedure;

20. a suit instituted under section [2]283 or section [3]332 of the Code of Civil Procedure.

21. a suit to set aside an attachment by a Court or a revenue-authority, or a sale, mortgage, lease or other transfer by a Court or a revenue-authority or by a guardian;

[1]See footnote under para 1.
[2]O 21 Rule 63 Civil Procedure Code, 1977.
[3]O. 21 Rules 100, 101, 103 Civil Procedure Code, 1977.

22. a suit for property which the plaintiff has conveyed while insane;

23. a suit to alter or set aside a decision, decree or order of a Court, or of a person acting in a Judicial capacity;

24. a suit to contest an award;

25. a suit upon a foreign judgment as defined in the Code of Civil Procedure, or upon a judgment obtained in the Courts of the State;

26. a suit to compel a refund of assets improperly distributed under [1]section 295 of the Code of Civil Procedure;

27. a suit under the Indian Succession Act, 1865, section 320 or section 321, or under the [2]Probate and Administration Act, 1881, section 139 or section 140, to compel a refund by a person to whom an executor or administrator has paid a legacy or distributed assets;

NOTE.—To be adopted as far as applicable.

28. a suit for a legacy or for the whole or a share of a residue bequeathed by a testator, or for the whole or a share of the property of an intestate;

29. a suit—

(a) for a dissolution of partnership or for the winding-up of the business of a partnership after its dissolution;

(b) for an account of partnership-transactions; or

(c) for a balance of partnership-account, unless the balance has been struck by the parties or their agents;

30. a suit for an account of property and for its due administration under decree;

31. any other suit for an account, including a suit by a mortgagor, after a mortgage has been satisfied, to recover surplus collections received by the mortgagee, and a suit for the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant;

32. a suit for a general average loss or for salvage;

33. a suit for compensation in respect of collision between boats;

34. a suit on a policy of insurance or for the recovery of any premium paid under any such policy;

35. a suit for compensation;

(a) For loss occasioned by the death of a person caused by actionable wrong;

(b) for wrongful arrest, restraint or confinement;

(c) for malicious prosecution;

(d) for libel;

[1]Section 73 Civil Procedure Code, 1977.
[2]Probate and Administration Act, XXIX of 1977.

(e) for slander;
(f) for adultery or seduction;
(g) for breach of contract of betrothal or promise of marriage,
(h) for inducing a person to break a contract made with the plaintiff;
(i) for obstruction of an easement or diversion of a water-course;
[1](ii) for an act which is, or, save for the provisions of Chapter IV of the Ranbir Dand Bidhi, would be, an offence punishable under Chapter XVII of the said Code;
[1](j) for illegal, improper or excessive distress, attachment for search, or for trespass committed in or damage caused by, the illegal or improper execution of any distress, search or illegal process;
(k) for improper arrest under [2]Chapter XXXIV, of the Code of Civil Procedure or in respect of the issue of an injunction wrongfully obtained under [3]Chapter XXXV of that Code; or
(l) for injury to the person in any case not specified in the foregoing sub-clauses of this clause;
36. a suit by a Muhammadan for exigible (mua'jjal) or deferred (mu'wajjal) dower;
37. a suit for the restitution of conjugal rights, for the recovery of a wife, for the custody of a minor, or for a divorce;
38. a suit relating to maintenance;
39. a suit for arrears of land revenue, village expenses or other sums payable to the representative of a village-community or to his heir or other successor in title;
40. a suit for profits payable by the representative of a village-community or by his heir or other successor in title after payment of land revenue, village expenses and other sums;
41. a suit for contribution by sharer in joint property in respect of a payment made by him of money due from a co-sharer, or by a manager of joint property, or a member of an undivided family in respect of a payment made by him on account of the property or family;
42. a suit by one of several joint mortgagors of immovable property for contribution in respect of money paid by him for the redemption of the mortgaged property;
43. a suit against the State to recover money paid under protest in satisfaction of a claim made by a revenue-authority

[1](ii) added and (j) substituted by Act IV of 1977, Schedule 1 published in Government Gazette dated 16th Chet 1977. Reference to chapters of Ranbir Dand Bidhi may be construed as reference to the same chapters of Ranbir Penal Code.
[2]Order XXXVIII of the Code of Civil Procedure, 1977.
[3]Order XXXXIX of the Code of Civil Procedure, 1977.

on account of an arrear of land revenue or of a demand recoverable as an arrear of land revenue;

[1]43-A. a suit to recover property obtained by an act which is, or, save for the provisions of Chapter IV of the Ranbir Dand Bidhi, would be, an offence punishable under Chapter XVII of the said Code;

44. a suit the cognizance whereof by a Court of Small Causes barred by any enactment for the time being in force.

THE CONSTRUCTION OF BRICK KILNS AND PREPARATION OF SURKHI, LIME AND PLASTER OF PARIS IN THE KASHMIR PROVINCE RULES, 1969.

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5. Location of a kiln.
6. Fees.

RULE.

7. Construction of kiln for purposes of Government.
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[1]Article 43-A added by Act IV of 1977, Schedule I, published in Government Gazette dated 16th Chet 1977. Reference to the chapters of Ranbir Dand Bidhi may be construed as reference to the same chapters of Ranbir Penal Code.

[*Translated from original in Urdu published in Government Gazette dated 18th Har 1969 (V).*]

THE CONSTRUCTION OF BRICK KILNS AND PREPARATION OF SURKHI, LIME AND PLASTER OF PARIS RULES, 1969.

AILAN NO. 7 DATED 5TH HAR 1969 RELATING TO RULES REGARDING THE CONSTRUCTION OF BRICK KILNS AND PREPARATION OF *Surkhi*, LIME AND PLASTER OF PARIS IN THE KASHMIR PROVINCE.

Rules regarding the constraction of brick kilns and preparation of Surkhi, Lime and Plaster of Paris in the Kashmir Province sanctioned by His Highness the Maharaja Bahadur under order No. 11/72 dated 6th Jeth 1969.

Whereas no rules have so far been sanctioned regarding the construction of brick kilns and preparation of *surkhi*, lime and plaster of Paris and whereas it is expedient that rules should be framed, it is hereby enacted as follows:—

Title and date of enforcement.

1. These Rules may be called the Rules regarding the construction of brick kilns and preparation of *surkhi*, lime and plaster of Paris and shall come into force from the 1st of Sawan 1969.

Retrospective effect.

2. These Rules shall not have any retrospective effect.

Application for construction of a brick kiln.

3. Any body who is desirous of starting a brick kiln shall submit an application to the Tehsildar on one anna stamp in the Form A appended. [1][This application will not be necessary when a kiln is to be set up by a land-holder having proprietory rights in the village for his own use.]

Procedure on presentation of application.

4. [2][On presentation of an application under Rule 3, the Tehsildar will ascertain whether the kiln is to be set up by the applicant on his own land or on the land entered in the name of some person other than the applicant. If a kiln is to be set up on land entered in the name of some person other than the applicant, an enquiry shall be made from that other person whether he has any objection, and if he objects or the land is reserved for kahcharai, licence shall be refused. When no objection is made and the applicant by means of an affidavit takes res-

[1]In Rule 3 words in [ ] added *vide* Act XIII of 1993 published in Government Gazette dated 1st Phagan 1993,

[2]Section 4 substituted and Exception A deleted and Exceptions B and C renumbered as A and B *vide* Act XIII of 1993 published in Government Gazette dated 1st Phagan 1993.

ponsibility for the payment of the land revenne, licence shall be granted in the Form B.]

EXCEPTION A. Fees for kilns constructed by any person in the villages of Jagirs of Sri Raja Sahib or Deorhi Khas or in the villages of Dharmarth Department shall be paid in the treasuries of respective Jagirs.

EXCEPTION B. If any person prepares bricks and lime for use in any well, tank, mosque, temple or other work of charitable nature, he shall be exempt from the payment of fees.

Location of a kiln.

5. As a rule, a brick kiln should be set up at a distance of [1][one hundred and fifty yards (four hundred and fifty feet)] from *abade-deh*, so that bad smell may not spread in the village and cause injury to the health of the villagers. Areas for construction of brick kilns shall be specified outside the limits of a Municipal Committee or [2][Town Area] and these Rules shall not, in any way, affect the bye-laws of the Committee or [2][Town Area.]

Fees.

6. A fee of Rs. 12 per annum shall be payable for every kiln though the kiln is worked only for a part of the year and this fee shall be continued to be paid annually so long as the licensee does not get his name removed from the register of licensees by making a regular application to the Tehsildar.

NOTE.—A separate fee of one anna per yard is fixed for all stones imported into the city and the contract for quarring and preparing plaster of Paris is sanctioned by the Forest Department.

[3][If a person sets up a kiln for his own use on his own land he shall not be liable to pay any fees. But an annual fee of Rs. 6 shall be charged if he sets up a kiln for trade purposes on his own land entered in his name.]

Construction of kiln for purposes of Government.

7. If any department of the Government is desirous of constructing a kiln for purposes of Government, it shall before doing so proceed to acquire land on which kiln is to be constructed according to the provisions of the Land Acquistion Act.

Procedure of keeping accounts of fees.

8. All fees for licences for kilns shall be entered in a register kept in tehsil office and made out in a foil and counterfoil according to the Form B attached. A statement showing all amounts received from different persons and prepared according to Form C shall be sent every month from the Tehsil office to the District office, and it

[1]Words in [ ] in Rule 5 substituted for "one qu rter of a mile" *vide* Act XIII of 1993 published in Government Gazette dated 1st Phagan 1993.

[2]Words added *vide* Act XIII of 1993 published in Government Gazette dated 1st Phagan 1993.

[3]Par. in [ ] to Rule 6 added *vide* Act XIII of 1993 published in Government Gazette dated 1st Phagan 1923

shall be the duty of the Sadar *Wasal-Baqi Nawis* to check the statement with a view to find out whether the number of the licensees has decreased. In case of decrease in the number of licensees a report shall be submitted to the Wazir Wazarat and an enquiry shall be made through the Tehsildar so that no person should work a kiln without paying licence fee. This will also keep the Wazir Wazrat duly informed and he will be in a position to check the register.

Contravention and its punishment.

9. Whoever contravenes any of the foregoing rules shall be punished by the Tehsildar under his administrative powers with fine which may extend to 25 rupees. These powers shall also form part of the Circular dated 19th Chet 1950 granting administrative powers to the Tehsildars.

Appeal and revision etc.

10. The procedure regarding appeal, revision and review observed in administrative orders shall also be followed in the orders passed under these Rules.

11. These Rules shall, if necessary, be amended in the light of experience gained about their working.

FORM A.

Application for licence for construction of kiln for the Samvat——19——.

1	Name of applicant.
2	Parentage and caste.
3	Residence.
4	Occupation.
5	Name of village where kiln is to be constructed.
6	Area for which application is made.
7	Number of kilns.
8	Particulars of articles to be prepared in kiln *i. e.* bricks, lime, *surkhi* or plaster of paris.
9	Distance from *Abadi-Deh*
10	Amount of fee to be paid.
11	Date of starting kiln.
12	Signature of applicant.
13	Order of Tehsildar regarding grant of licence.

FORM I B.

Licence for the construction of kiln for preparation of bricks and surkhi etc. for the Samvat———19 .

1	Serial No.
2	Nam[e] of village.
3	Name of licensee with parentage and residence.
4	*Khasra* Number of area to be used for kiln,
5	Measurement of area to be used for kiln.
6	Number of kilns for which licence obtained.
7	Date of deposit of fee in the treasury.
8	Amount deposited.
9	Date of beginning of the licence.
10	Date of termination of the licence.
11	Signature of Tehsildar.

FORM I B.

Licence for the construction of kiln for preparation of bricks and surkhi etc. for the Samvat———19 .

1	Serial No.
2	Name of village.
3	Name of licensee with parentage and residence.
4	*Khasra* Number of area to be used for kiln.
5	Measurement of area to be used for kiln.
6	Number of kilns for which licence obtained.
7	Date of deposit of fee in the treasury.
8	Amount deposited.
9	Date of beginning of the licence.
10	Date of termination of the licence.
11	Signature of clerk issuing licence.
12	Signature of Tehsildar.

FORM C.

Monthly statement of kilns in the Tehsil————————for the month of————————19 .

1	2	3	2	5	6	7	8	9	10	11	12	13
Serial No.	Name of village.	Name of applicant with parentage, caste and residence.	Whether the applicant is already licensee or not	*Khasra* Number.	Measurement of area applied for.	In which *Khata* the area applied for is entered in the papers.	Particulars of kiln.	Number of kilns	Date of depositing fee with No. of Treasury receipt	Amount of fee deposited.	Date of getting of licence.	Remarks

NOTE —If any licensee has not renewed his licence, a report shonld be submitted with the statement that he had not obtained the licence and reasons should also be given.

GAME LAWS NOTIFICATION , 1913-14, SAMVAT 1970. CONSOLIDATED UP TO SAMVAT 1996 (1938-39).

1. The rules apply to all European and Indian residents and visitors, ladies as well as gentlemen including all State-subjects and officials, with the exception of those who have been specially exempted by order of His Highness the Maharaja Bahadur.

2. The rules are applicable to the Kashmir Province, the Astore Tehsil, including the Bunji Niabat, the Ladakh, Skardu, Kargil and Kishtwar Tehsils as at present existing with the following exceptions:—

(*a*) The *illaqa* of the Raja of Poonch.

(*b*) All *Rakhs* or State Game Reserves which now exist or may be hereafter formed. The existing *Rakhs* or State Game Reserves are:—

Kashmir Province.

(1) Dachigam.
(2) Khanmoo and the grass-farm between Sangri and Chak Khanmoo.
(3) Khrew.
(4) Tral-cum-Kherim and Panyar, as far as the Bhoogmar road.
(5) Khul basin in Awantipura Tehsil.
(6) Anchar lake from Petakundel to Sangam.
(7) Hokar Sar Jhil.
(8) Hygam Jhil.

Jammu Province.

(1) Ramnagar
(2) Keran
(3) Kheri.
(4) Bahu. } Jammu Tehsil.
(5) Mansar (Tunnel) .. Jammu & Reasi Tehsils.
(6) Mansar (Sagoon) .. Jammu, Samba and Ramnagar Tehsils.
(7) Sansu.
(8) Tandeh.
(9) Nehranal. } Udhampur Tehsil.
(10) Kotli.
(11) Thanoa.
(12) Janganoo.
(13) Dalsar.
(14) Marh. } Ramnagar Tehsil.

(15) Gurarh.
(16) Badyal.
(17) Makwal.
(18) Agrachak. } Ranbirsinghpura Tehsil.

(*c*) 1. The Gandoos and the Rumbak Nullahs belonging to the Raja of Khaplu.

2. The Shigar, the Randu and the Kiris Nullahs also portions of the Mantho and Satpur Nullahs as demarcated in (1905) belonging to the the Rajas of Tolti and Skardu respectively.

3. The Harcho Nullah in Astore belonging to the Raja of Astore.

NOTES.– (*i*) The Shankracharya hill from the Gagribal point upto and including tne basin above Pandrathan is a sanctuary.

(*ii*) In the *illaqa* of the Raja of Poonch no one is allowed to shoot without the permission of the Raja Sahib, Poonch.

(*iii*) Permission to shoot in the Nullahas referred to in sub-section (*c*) above can only be obtained from the Rajas concerned.

(*iv*) Shooting in any *Rakh* or State Game Reserves in 2(*b*) is strictly prohibited without special permission of His Highness the Maharaja Bahadur

(*v*) Entering the Game Reserves and Sancturies in rules 6(*i*) and 12 without permission is strictly prohibited.

(*vi*) The undermentioned *margs* on the north side of the Sindh Valley are closed for all grazing.

Lung *marg*, Mohand *marg*, Lar *marg*, Kanidalau and all intermediate ground.

(*vii*) All demarcated forests in Kashmir are governed under the Forest Acts, and offences under these Acts may be dealt with by the penalties prescribed therein.

3. Special rules as in appendices I, II and III govern the shooting in and special permits (without which no one is permitted to travel or shoot) are required for:—

(*a*) The Astore shooting district.

(*b*) The Kajnag and Kafir-Kund areas including the Moji and the Shamashberry *Rakhs*.

(*c*) The Ladakh District including Chhangchhenmo.

NOTES.—(*i*) Application for such rules and permits should be made by sportsmen in each case to the Game Warden.

(*ii*) All routes leading into Astore from Baltistan are closed except under special permission which may be obtained in special cases only from the Political Agent, Gilgit.

(*iii*) Sportsmen visiting Ladakh and Baltistan should apply for a *parwana* to obtain transport and supplies on these routes to the Game Warden.

(*iv*) Until the passes are officially declared open sportsmen will be given no official assistance in obtaining coolies to cross the Zojila and Burzil passes, but will have to make their own arrangements.

(*v*) All taking of life is strictly prohibited on His Highness' and Maharajakumar's auspicious birthdays.

Driving of Black Bears, Leopards and Pigs is permitted from March 15 to September 30 inclusive. On the open area in the hills between Verinag and Baramulla on the left bank

of the Jhelum river, driving of such game is allowed from March 15 to November 15 inclusive. With the above exceptions driving game with men and dogs is prohibited.

5. Except in rare instances where owing to excessive numbers other arrangements become necessary, the destruction of females and catching of Ovis Hodgsoni (the ammon of sportsmen), Sharpu, Burhal, Markhor, Ibex, Tibetan Antelope, Gazelle, Barking Deer, Kashmir Stag (Barasingha), and Brown Bear with small cubs at heel is forbidden.

The Game Warden is however authorised to give written permission for a fixed number of fema'es of these animals to be shot within a defined locality, when he is convinced that such action is necessary and in the interests of sport. Such permission if given is to be restricted to licence-holders or to State servants detailed for this work only.

6. (*a*) Shooting, killing and catching of Yak is totally prohibited.

(*b*) No Musk Deer, either male or female, may be killed, taken or caught except under rule 15 licence VI, or under the authority of a written order obtained from the Game Warden but such permission shall only be given in rare instances.

(*c*) All shooting, killing and catching of Ibex is forbidden in the Valley of Kashmir, *i.e.*, the whole area which comprises the water-shed of the Jhelum river and its tributaries above Baramulla.

(*d*) The killing of serow is prohibited between Chashma Shahi Sanctuary and Dachigam *Rakh*.

(*e*) The killing of Markhor is prohibited in all Nullahs flowing into the Indus above Randu in Baltistan with the exception of those laid down under rule 13.

(*f*) The killing of Brown Bears is prohibted in the Kajnag area and in the whole of the Kashmir Valley.

(*g*) The killing of Herons is forbidden except on trout streams on a special permit from the Game Warden.

(*h*) The killing of monkeys of all kinds is forbidden.

(*i*) The following are the Game Reserves under the Game Preservation Department:—

Shooting in them shall be allotted on application to officials stationed in Srinagar to residents whose business or work lies in Srinagar and to visitors also in special cases. No allotment shall be valid without a permit which must be obtained beforehand and which must be handed over to the responsible Game or Forest official on demand. No grazing, cutting of wood or grass, habitation and traffic shall be permitted in these reserves.

(1) Achhabal Rakh;

(2) The Ovra Rakh near Pahalgam;
(3) The Chatargul Nullah in Sindh Valley;
(4) The Dara area;
(5) The Nishat, Brain, and Chashma Shahi basin;
(6) The Wungat Rakh in the Sindh Valley;
(7) Khandi and Kharus Nullahs in the Uri Tehsil the lower boundary of which is the new road to the Hajipir;
(8) The Pampur and adjoining jhils of Kranchu-cum-Sondahar and Mænboog;
(9) Mir Gund Jhil; and
(10) The Kajnag and Kafirkund areas including the Salkhala, the Moji and the Shamashberry Rakhs.

NOTE.—1. All shooting from the high grounds, enclosing the jhils in (8) is forbidden.

2. The special permits shall be issued by the Game Warden for fixed dates only and for not more than three days in any individual case for big game shooting.

7. The possession of unlicensed guns, firearms and ammunition as well as of all nets, snares or other appliances for the express purpose of taking birds or game animals is illegal.

Explanation.—Unlicensed gun, firearms and ammunition means the gun, firearms and ammunition in the possession of a person who shoots game birds and animals without a shooting licence or a special permit.

8. The sale or export for sale of the pods of Musk Deer and of the heads or skins of the Game animals mentioned in rule 5 is prohibited. The sale of the skin of Black Bear and Leopards and other vermin is allowed if killed by licence-holder or other authorised persons.

9. Where any person who does not hold a shooting licence is found in possession of any game or parts of game recently captured or killed, the Court may presume that he has captured or killed such game illegally.

10. The breeding season of Chakor, Patridges and Pheasants is considered to extend from March 1 to September 30 (inclusive), that of Geese, Duck and Teal from April 15 to September 15 and that of Snipe from April 1 to August 31 (inclusive). During the season thus defined no one shall destroy, net or capture in any fashion, any of these birds, nor shall any person sell any such birds during the breeding season. Taking of eggs of game birds is strictly prohibited.

11. (*a*) The shooting season for Chakor, Partridges and Pheasants is from October one to the last day of February, for wild fowl (Geese Duck and Teal) from September 16 to April 14 inclusive and for Snipe from September 1 to March 31. No wild fowl or any of the game birds herein mentioned may be captured by nets, snares, lines with hooks, and by

the method known as *Kakao Putta* or any other similar device.

(*b*) The shooting season for Kashmir Stag shall extend from September 15 to March 14. The remainder of the year is a close season.

12. The following are sanctuaries under the Game Preservation Department. No shooting, grazing, cutting of wood or grass, habitation or traffic is permitted in them:—

(*i*) Aijas Nul ah and Jhil in the Bandipur District.

(*ii*) Khushmul and Yimu basins in Baltistan.

(*iii*) The Rajparin and Bewa basins in the Nowbug District.

(*iv*) Soomjan and the Sapphire Mines Nullah in Kishtwar.

(*v*) Askor Nullah in Randu Baltistan.

(*vi*) The old Rakh Chashma Shahi.

[1](*vii*) Pond near Sri-Gouri Shanker in Kishtwar.

(*viii*) The Shankracharya hill from Gagribal point upto and including the basin above Pandrathan.

13. The following Nullahs in Baltistan *viz.*, Alchor and Hoshpa, Nurh and Ghoru, Turmic, Tsuri and Bragicha are open for allotment under the following restrictions:—

Each Nullah will be limited to one gun for the first period, *i.e.*, April 15 to July 14 and one gun for the second period *i. e.* July 15 to October 15.

Special permits will be issued for these Nullahs by the Game Warden without which no licence will be valid for shooting in them.

Guns for the first period will be allotted by priority of application on arrival in Kashmir, for the second by application from any place.

Each gun will be limited to two Ibex and two Markhors only in these Nullahs.

14. The State reserve to themselves the right to close any Nullah, Jhil, or place at any time during the season for State purposes or on the representation of the Game Warden, that the Nullahs, Jhil or place in question has been too heavily shot or for any other reason. The Game Warden is further authorised under this rule to take immediate action if he is satisfied that it is necessary reporting the step taken to the Government.

15. Licences to shoot big and small game, without which no person is permitted to shoot or to proceed in search of game, will be granted as follows:—

[1]Added *vide* Council Resolution No. 12, dated 20th September 1924, published in Government Gazette dated 3rd Maghar 1981.

I. A licence for which Rs. 175 will be charged in force from March 15 to November 15, permits the holder to shoot in the Nullahs and districts which are open for sport, the following number of animals only:—

Markhor of any variety in all		2	Tibetan Gaze le	..	1
Ibex (of which 2 only in Ladakh)		3	Kashmir Stag	..	2
Ovis Vignei (Sharpu)	..	2	Serow ..	..	4
Ovis Hodgsoni (Ammon)	..	2	Brown Bear	..	2
Ovis Nahura Burhel	..	4	Tehr ..	..	4
Tibetan Antilope	..	3	Goral ..	..	4

Also small game subject to rules 10 and 11 above upto November 15 and Pigs, Black Bears and Leopards, without limit.

II. A licence of the vlaue of Rs. 55 will permit the holders to kill Black Bears, Leopards and Pigs without imit from March 15 to November 15 inclusive.

III. A winter licence, for which Rs. 105 will be charged will permit shooting big game, from November 16 to March 14, as under:—

Markhor any variety	..	2	Kashmir Stag	..	1
Ibex.. ..	..	2	Serow ..	..	1
Sharpu ..	..	2	Tehr ..	..	3
Burhel ..	..	3	Brown Beer	..	2
Tibetan Antelope	..	3	Goral ..	..	3
Tibetan Gazelle	..	1	..		

Also small game (subject to rules 10 and 11) permitted under licence V and Pigs, Black Bears, Leopards and other Vermin without limit.

IV. To meet the special circumstances of Baltistan, Ladakh, Astore and Gurais, a licence of the value of Rs. 50 in force between November 16 and March 4, will entitle the holders to kill:—

(*a*) In Baltistan and Lower Ladakh *i.e.*, below Khalsi on the Indus: Ibex 2, Sharpu 2.

(*b*) In upper Ladakh *i.e.* above Khalsi on the Indus: Burhel 2, Sharpu 2.

N. B.—The licences (a) and (b) are issued subject to the conditions of Ladakh Rule No. 2 and they do not permit the holder to shoot within the blocks closed under the rules.

(*c*) In Astore and Bunji: Sharpu 4.

(*d*) In Gurais Valley: Ibex 1, Brown Bear 1 and Black Bear 2.

Also small game as laid down under licence V (a) and

all Vermin.

These licences will be strictly limited in numbers and issued in special cases only by the Game Warden on the personal recommendation of the British Joint Commissioner Leh or the Wazir-i-Wazarat concerned.

No person can hold licences III and IV at the same time.

V. (*a*) A small game licence for which Rs. 70 will be charged will enable the holder to shoot Pheasants, Chikor, and Partridges from October 1 to the last day of February inclusive, Geese, Duck and Teal from September 16 to April 14 inclusive and snipe from September 1 to March 31.

This licence does not entitle the holder to shoot within any forest inhabited by big game, nor within any big game reserve under the Game Preservation Department unless for Pheasants in which case a permit will be issued and guns and ammunition used for small game shooting only will be allowed to be taken.

(*b*) A small game licence for which Rs. 42 will be charged, will enable the holder to shoot as provided under licence V(a) above but for a period of two months only to run from the date of issue of the licence.

(*c*) A small game licence, for which Rs. 70 will be charged will enable the holder to shoot as provided under licence V(a) above and aslo to use punt and long guns for the purposes of killing wild fowl.

(*d*) A small game licence for 15 days for which Rs. 15 will be charged will enable the holder to shoot as provided under licence V (a) above.

NOTE.—1. Sportsmen holding any of these licences may kill Ram Chikor between the date of September 16 and May 1st. Pigs on the left bank of the Jhelum above Srinagar and on both sides of the river below Srinagar; but outside a 5 miles limit of any of the State big game reserves. Also Leopards including Ounces, Wolves, Foxes, Martens and other vermin.

No sportsmen may take out more than one of the above licences (I) to (V).

VI. A special licence, for which Rs. 73 will be charged, which shall be repeated in the case of Musk Deer only, will enable the holder to kill one Musk Deer, or if a holder of Rs. 175, No. 1 licence, or the Rs. 105, No. III licence to kill one specimen extra of any one of the animals laid down in the licence in question except Markhor, Ovis Ammon and Goa.

Any sportsman who shall kill a greater number of the game animals than is permitted under the terms of his licence, will be called upon to take out a number VI Rs. 70 licence for each animals so killed.

VII. A trapping licence of Rs. 40 will be issued for trapping all vermin. Only six traps will be allowed on each licence.

The State reserve to themselves the right to refuse to issue any of the above licences.

When a licence has once been taken out no refund is permitted. Exchange of licences is allowed as under:

1. A Rs. 55 No. II licence may be exchanged for a Rs. 175 No. 1 licence on payment of the difference, provided that the applicant has not previously been in search of, or shot, any of the animals specially included under No. I list.

2. A Rs. 70 No. V(*a*) licence may be exchanged for either a Rs. 175 No. I or Rs. 150 No. III on payment of the difference.

3. A Rs. 42 No. V (*b*) licence may be exchanged for a Rs. 70 No. V(*a*) licence on payment of the difference.

4. A Rs. 15 V (d) licence may be exchanged for either Rs. 70 V (*a*) licence or a Rs. 42 V (*b*) licence.

Explanation.—Exchange can be made only before and not after the expiry of licence.

16. No one shall take service as a regular *shikari* with sportsmen until he has been registered by the Game Warden and granted a licence which shall be renewed annually.

17. Employers of *shikaries* are advised to insist on the *shikaries* producing their registration forms, as these show any adverse entries which have been made against them.

Any sportsman wishing to employ a villager or a local man as *shikari* is requested to communicate his name to the Game Warden for registration in order that he may become liable to the same penalties as the regular *shikaries*.

18. (*a*) Whoever, being subject to the jurisdiction of the Kashmir State Courts, commits, abets or attempts to commit a breach of these rules or the special rules for Astore, Kajnag or Ladakh issued under rule 2, shall be punished on first conviction with imprisonment of either description for a term which may extend to one month or with fine which may extend to Rs. 25 or with both and on second conviction with imprisonment of either description which may extend to four months or with fine which may extend to Rs. 100 or with both, and if the offence is one under rule 6 and 12, he shall be punished on first conviction with imprisonment of either description which may extend to three months or with fine which may may extend to Rs. 100 or with both, and on second conviction with imprisonment of either description which may extend to four months, or with fine which may extend to Rs. 200 or with both.

(*b*) In addition to any punishment awarded under (*a*) above, an offender shall be liable to forfeit the gun or other weapons, and dog used in connection with his offence, as well

as all trophies which may be the result of the latter while if a *shikari*, he shall also be liable to have his licence forfeited for one year, or for such further period as may be considered necessary.

(*c*) If any person who is not subject to the jurisdiction of the Kashmir State courts, commits an offence against these rules or the special rules for Astore, Kajnag and Ladakh issued under rule 2 he shall be liable to forfeit his licence, and also his gun, weapons, dogs and trophies as provided in (*b*) above, and his case shall be reported immediately to the Resident for disposal in such manner as he may think fit.

(*d*) Any *shikari*, watcher or other Government official who shall fail to report any infringement of the Game Laws on its being brought to his notice or being a *shikari* who having been suspended for misconduct under rule 18(*b*) above shall take service with sportsmen, shall be liable to be dealt with under rule 18 *supra*.

(*e*) Any watcher or employee of any Department of His Highness' Government, who shall make use of his position to levy bribes in any form, or otherwise to oppress or intimidate any person under threats of punishment under the Game Laws, shall be liable to the penalties laid down in this rule.

(*f*) Any person who is found grazing his cattle in any of the G. P. D. Game Reserves or sanctuaries closed for grazing, will be allowed to compound by paying a fee not exceeding a rupee per head of cattle or a total of Rs. 50 in any one case or he shall be punished under this rule. The Game Warden, Assistant Game Warden and Forest officer of the rank of Forest Ranger and above are empowered to compound such cases.

NOTE.—Definition of "Cattle" as in Forest Law Manual of the State *i. e.*, Cow Bulls, Horses, Sheeps, Goats etc., etc.

19. The following dimensions are laid down as a definition of shootable heads permitted to be killed under the terms of the Kashmir Game Laws:—

	Inches.
Markhor (of any variety)	45
Ibex	35
Ovis Ammon	38
Sharpu	24
Burhel	23
Tibetan Antelope	22
Tibetan Gazelle	10
Kashmir Stag (Barasingha) ..	35

Shikaries will be held equally responsible with their employers that animals under the above dimensions are not shot. No accidents will be recognised. Sportsmen shooting under-sized heads will be called upon to take out an extra special licence No. VI of Rs. 70 for each under-sized head shot.

Records are kept by the Game Warden in the interest of sport, of all heads of exceptional size, killed in Kashmir. Sportsmen are earnestly invited to co-operate with the Game Warden and to send him any such exceptional heads they may obtain for measurement and entry in the Kashmir Big Game Records.

20. (*a*) The practice of palming off on sportsmen old heads of tropies that have been killed by native *shikaries* being largely on the increase, sportsmen are asked to be very careful about accepting heads as their own unless they have been gathered by them or can absolutely verified as the identical animals they may have wounded. In all cases the head and jaw bone should be complete with the actual decaying flesh adhereing to the bones, and sportsmen should insist that other bones, skin, and feet should be produced with the head. Failing the above requirements the presumption is that the head is an old one and case should be immediately reported to the Game Warden.

Any attempt by a *shikari* to palm off such a head shall be considered to be a breach of rules punishable under section 18 *supra*.

In no case should rewards or money be given to *shikaries* or villagers for heads brought in by them. The purchase of heads is a direct incentive to the encouragement of poaching and the killing of animals for sale to sportsmen.

(*b*) The attention of sportsmen is called to visitors Rule 26. Sportsmen are requested on no account to leave their rifles with their *shikaries* on quitting a Nullah, nor to make presents of or sell firearms or ammunition to His Highness' subjects.

No *shaikri* is permitted to possess any rifle for which he has not taken out a licence and every *shaikri* is warned that if he is found in possession of an employer's rifle, after the employer has left the shooting ground, he will be dealt with under rule 18.

(*c*) The practice of giving rifles to *shikaries* for the purpose of following wounded animals, or of offering rewards for the same to local men or others, is not permitted, as it is a direct incentive to poaching and killing animals which cannot be rightly claimed by sportsmen as their own.

21. (*a*) REWARDS.—Any person or persons giving such

bona fide information as shall lead to conviction under these laws shall be entitled to a reward which may at the discretion of the Magistrate trying the case extend to the full amount of fine inflicted.

(*b*) Employees of the Game Preservation Department or any other State employees who shall give information under para (*a*) *supra*, shall not be debarred from receiving above rewards.

(*c*) The Magistrate trying the case will have the power to grant the above rewards (*a*) and (*b*) *supra*, on his authority without any reference to the Government.

(*d*) The following scale of rewards will be paid by the Game Warden for all vermin killed by licence-holders employees of the Game Preservation Department and by any other persons specially authorised to kill them:—

	Rs.	As.
1. Leopards (snow and common)	10	0
Do. Cub do.	5	
(Skin to remain the property of the killer if a licence-holder.)		
2. Wolves, Wild dogs, Lynx, etc.	10	0
3. Carrion, Crow and Carmorant and other Fish Vermin	0	4

NOTE.—A reward of Rs. 5 may be paid at the discretion of the Game Warden for Otters doing damage on trout streams.

In all cases the reward will be paid on the skins being brought or sent before being tanned to the Game Warden by the killer. They will then be stamped under his authority and returned to the owner if a licence-holder. In the case of the employees of Game Preservation Department they will be retained and sold by the Department for their benefit while in the case of specially authorised persons for the benefit of the Game Preservation Department.

Skins brought in by the Srinagar Skin Merchants will not be recognised for rewards.

22. Several cases of accidental killing of cows and cattle by sportsmen have been brought to the notice of the Darbar. It is hereby notified under the orders of His Highness the the Maharaja Bahadur, that all shooting in State territor es is forbidden after sunset.

23. Licence-holders who, by the conditions of a licence, are enjoined not to kill more than a special number of animals, are requested to return the licence, on the expiry of its period, to the Game Warden with a statement showing the number of animals killed by them, filled in and signed.

24. Sportsmen are particularly requested not to give presents to the Game Preservation Department servants, and

to report any irregularities on their part to the Game Warden. Servants receiving presents from sportsmen will be dismissed.

25. Sportsmen are warned that they must report to the Game Warden all cases of serious injuries received by *shikaries*, beaters and other State-subjects (with full description and address) whilst employed in beating etc., in their service together with full report on the circumstances of the occurrence, and of any compensation or money reward paid by them to the injured person or his relatives.

Disregard of these rules shall render the offender liable to forfeiture of his licence or refusal to issue any licence on any future occasion under rule 14.

Applications for licences may be made to the Game Warden, Srinagar to whom all other communications should be addressed, either personally or by letter.

NOTIFICATION.

Game Laws and Fisheries Act. extended to Jammu Province.

(*Published in Government Gazette datcd 11th Jeth 1991*).

His Highness the Maharaja Bahadur in Council has been pleased (*vide* Hon'ble Prime Minister's endorsement No. G.B. 661 dated 5th March 1934) to accord sanction to the extension of the Game Laws and the Fishery Act to the whole of the Jammu Province with the following Special Provisions:—

A. Close Season.

To prevent the indiscriminate shooting of Small Game, close Seasons as specified below shall be enforced:—

1st April to 14th September	..	For Bustard, Brahmani Duck, Jungle Fowl, Partridges (Grey and Black) Snowcock (Ram Chikor), Tragopan, Kalij, Chir, Koklas and Munal Pheasants, Green Pigeons, Hill Pigeons and Woodcock.
1st March to 31st July	..	For Sand Grouse.
1st March to 14th September	..	For Chikor
1st July to 14th September	..	For Quail.
1st April to 14th September	..	For hares, Wild-fowl and Snipe.

B. Prohibitions.

The following animals of Game being rare in the localities mentioned against each, their shooting is strictly prohi-

bited:—

Barasingha	..	..	In Ramban.
Serow	..	..	In Bhadarwah.
Cheetal	..	..	In the whole of the Jammu Province.
Musk Deer	..	..	
Females of Barking Deer		..	
Females of Thar	..	..	
Females of Gural	..	..	
Peacock	..	..	
Heron	..	..	
Nilkanth	..	..	

C. LICENCES FOR SHOOTING AND FISHING SHALL BE CHARGED AS BELOW:—

Shooting Licences.

1. For the Ramban and the Bhadarwah Tehsils (where Game is more or less similar to that in the adjoining tracts of the Kashmir Province and the Kishtwar Tehsil) the fees for Shooting Licences shall continue to be the same as for those areas. For the rest of the Province, excluding closed areas which will be subsequently notified, the fees shall be:—

Rs. 20 for big game (Shooting and Hunting for Season 1st January to end of December).

Rs. 5 for small game (Shooting, Hawking and Snaring for Season).

These Licences shall not be convertible into the corresponding Licences for Kashmir.

Fishing Licences.

2. For the purpose of these licences, Ramban, Bhadarwah, and Kishtwar Tehsils shall not be treated like the Kashmir Province. Thus the fees for the whole of the Province will be:—

(*a*) *Mahseer Fishing Licences.*—(For the whole of the Jammu Province including Tangrot except closed waters which will be subsequently notified).

Rs. 30 for fishing with Net for Season. (1st January to end of December).

Rs. 30 for fishing with Rod for Season as above.

Rs. 20 for fishing with Rod for 10 days.

Rs. 3 for fishing with Rod for one day.

These Licences cover coarse fishing also as in (*b*) below:—

(*b*) *Coarse Fishing Licences*—Rs. 20 for fishing with Net for Season (1st January to end of December).

Rs. 10 for fishing with Rod for Season as above.
Rs. 5 for fishing with Rod for 10 days.
Rs. 2 for fishing with Rod for a day.

These licences shall be convertible into the Mahseer Fising Licences as in (*a*) above, on payment of difference.

D. Sanctuaries and Reserves.

For Big and small Game.

(*a*) No new Sanctuaries other than the places sacred to different communities will be created at present.

The following are declared as Game Reserves in which shooting will be allowed on Permit only:—

All the Rakhs under the Revenue Department.

Shashehra Forest—an area near Rajouri (in the Mirpur Forest Division).

Jhanlanger Forest—an area near Reasi (in the Reasi Forest Division).

Jasrota Forests:— an area near Kathua (in the Billawar Forest Division).

For Fisheries.

(*b*) Portions of the rivers sacred to any community shall remain as sanctuaries. These will be notified in due course.

Consequent on this extension of the Game Laws, the Game Warden shall have jurisdiction over the whole of His Highness' Territories, Jammu and Kashmir.

The Divisional Forest Officers shall enforce these rules in their respective Division, while the Revenne Officials shall similarly enforce them outside the Forest areas.

APPENDIX I.

Special Rules for Astore Shooting District.

Definition of area now open.

1. The Astore Shooting District for the purpose of these rules, is considered to be the catchment area of the streams flowing from the Kamri and Burzil passes in the direction of Kashmir to their junction above Astore. Beyond this the catchment areas of the streams flow into the Astore River on both banks till its junction with the Indus at Ramghat. All Nullahs running into the Indus below Ramghat are closed and no persons are permitted to travel or shoot below this point, which is held to be the boundary of Chilas territory. Above Ramghat the Nullahs on the

left bank of the River Indus as far as the junction of the Gilgit River and above this, the whole of the country on both banks of the Indus which is now included in the Bunji Niabat, as far as the village of Bulatchi (including the Bulatchi Nullah) on the left bank of the river, and the camping ground at Shangus on the right bank.

Regulations regarding Chilas.

2. Sportsmen, in view of the serious political objections against their entering Chilas, are warned that they must in no case cross or even approach the watershed in the direction of, or trespass, in Chilas territory. If any inconvenience arises through disobedience of these orders, the whole area thrown open will be closed absolutely.

Close Nullahs.

3. Mir Malik is reserved for the use of the garrison at Rattu Camp.

Routes closed.

4. In consequence of these rules, the routes leading into the Astore District from Foalwein and Rheyl (or Kel) through Mir Malik remain closed.

5. Sportsmen must bring with them the whole of their cooly and pony transport from Kashmir, as none will be available in the Astore Shooting District. If through any unforeseen cause, necessity should arise for extra coolies or ponies, application should be made, stating the special circumstances of the case to the Tehsildar at Astore, who will make necessary arrangements.

Certificate to be signed by all sportsmen.

6. All sportsmen permitted to shoot in the Astore Bunji Nullahs must sign a certificate to the effect that they agree to take with them all necessary transport and supplies for themselves and their followers, for the period they are in the Astore Districts, as neither can be found there, also that they understand that there is a prohibition against ladies accompanying them beyond the Kamri and Burzil passes.

The bazar shops at Astore and Bunji will furnish supplies for the followers, and meat, as far as they are available, at the fixed local rates, but sportsmen are warned that the quantity of such supplies is extremely limited and they are advised, therefore, not to count on obtaining such supplies of any kind. If they are available and the villagers are willing to sell, sportsmen are requested to see that payments are made in their own presence to the actual vendors.

Local authorities' power regarding permits.

7. The local authorities are authorised to call upon all persons travelling in the district to produce their permits.

8. After entering the Astore Shooting District, as above defined, European sportsmen will be subject to the same rules

and regulations as hold good in other parts of the State.

The Jammu and Kashmir Game Laws to apply.

9. The Jammu and Kashmir Game Laws will apply in all respects to al sportsmen shooting in the Astore Shooting District.

Name of sportsman to be notified to the Revenue authorities, Astore.

10. The names of all sportsmen obtaining permission to shoot in the Astore Shooting District will be notified by the Game Warden to the Revenue authorities, Astore.

Regulation regarding Shikari.

11. No Kashmir *shikari* except those holding the Game Warden's Certificate will be permitted to enter the Astore Shooting District.

Particulars as to local *shikaries* can be obtained on application to the Tehsildars at Guris and Astore and Naib-Tehsildar at Bunji.

12. (1) The Astore Shooting Season is divided into two periods:—

First period—15th April to 14th July.
Second period—15th July to 15th October.

Division of Shooting Season.

Permits for the 1st period will be granted by priority of application on arrival in Kashmir. Applications for the second period may be made in advance any time on or after January 2nd and will be granted in the order of their receipt.

Application for the permits should be sent to the Game Warden.

Ten guns will be allowed during each period of which six only will be permitted to shoot Markhor. Each of the six guns will be allotted a particular Nullah in accordance with priority of application, and this Nullah only must be shot in for Markhor.

(2) The Nullahs which will be available for shooting as above in 1937-38 will be (1) Dashkit, (2) Mushkin, (3) Abadibur (4) Burmai (5) Mayadas (6) Shaltar (7) Burduch and (8) Garey.

All other Nullahs on the right bank of Astore River below Astore as far as Bunji and all other Nullahs which flow into the Indus, above Bunji and which are in the Bunji Tehsil [as laid down in rule (1)] will be closed.

The Nullahs flowing into the Kamri River, except Mir Malik, and those on the left bank of the Astore River below Astore and on both banks of river above Astore, will be available for any of the ten guns holding Astore permits for the shooting of Ibex, Sharpu and Red Bear.

(3) The Shooting Season of small game in the Astore District will extend from September 1 to the last day of February, remainder of the year will be close season.

13. Sportsmen are warned that the employment of coolies to cross the Burzil Pass cannot be insisted on during the months of March and April and is entirely voluntary. If coolies are willing to take service and volunteer for the work, the same charges will be fixed as have been laid down in similar cases in Kashmir, *viz.*, 10 annas a march, and these rates will extend from Minimurg to Chilum Chowki. Further, the arrangements, for the crossing of the Burzil Pass should be left to the coolies themselves who, being local men are acquainted with the difficulties of the road and the climatic conditions that have to be met.

14. The date of permit issued to sportsmen will be the date on which they are permitted to leave Bandipur to cross the Burzil Pass, and will be strictly enforced. Sportsmen or travellers will start at intervals of not less than two days interim, and under no circumstances will they be allowed to lessen the interval, or pass each other on the road. Sportsmen are requested to carry out the spirit and letter of this rule 2, any infringement of which will result in the curtailment of shooting during the first period.

APPENDIX 2.

Special Rules for Kajnag and Kafir Kund areas including Moji and Shamashberry Rakhs.

Definition of area.

1. The Kajnag and Kafir Kund is considered to be the range of mountains and all off-shoots therefrom, from Baramulla to Domel, the watershed of which flows into the area drained by the rivers Pohru, Jhelum, Ginger (or Karnah) and Kishenganga.

Division of Shooting season

2. The Shooting Season, for Markhor in the Kajnag and Kafir Kund areas as defined in rule I is divided into two periods *i. e.* first period—15th April to 14th July, 2nd period—15th July to 15th October.

The remainder of the year will be close season.

Six guns only will be permitted during each period. Each of the six guns in each period will be allotted a particular Nullah in accordance with priority of application, and this Nullah only must be shot in for Markhor. The six Nullahs which will be open for shooting in 1937-38 will be:—

(1) The Limber including the Gretnar and the Bhimiar branches, (2) Goojar (3) Miadan, (4) Islamabad, (5) the Domel

and Riperday beat in Kathi, (6) the left side of Moji Nullah comprising all grounds on the left bank of the river from its source to the mouth of Nullah including.

Gabdori and Kunirawal Nullahs in the Shamashberry the rest of the Shamashberry range is an open area for shooting Red Bear.

N. B.—Sportsmen will be permitted to march to and occupy their Nullahs on or after the 10th of April and 10th July respectively, on the understanding that they do not commence to shoot before the 15th of that month.

Permits for the 1st period will be granted by priority of application on arrival on or after January 2nd in Kashmir. Applications for the second period may be made in advance any time and will be considered in the order of their receipt.

Applications for permits should be sent to the Game Warden, Srinagar.

Rules for Shooting in the Winter Season.

3. A limited number of sportsmen holding the Winter licences will be permitted to shoot big game (other than Morkhor and Red Bear) as well as small game, in the Kajnag and Kafir Kund areas from November 15th to March 14th. Applications for special permit for the purpose should be made to the Game Warden.

Limits of grazing.

4. No grazing or collection of Kuthroot wood etc., nor introduction of dogs, is permitted in Kajnag and Kafir Kund or in the Shamashberry and Salkhala ranges above the boundary pi lars demarcated in 1903 and 1907, respectively. If any person is found grazing cattle in any of the Game Laws Sanctuaries or Game Reserves closed for grazing he will be liable to a fine of one rupee per head.

5. The shooting of Red Bears is temporarily closed in the Kajnag and Kafir Kund Districts but is permitted in the Shamashberry.

APPENDIX 3.

Special Rules for Ladakh Shooting District including Changchanmo area.

1. All sportsmen shooting in Ladakh are required to have in their possession the Ladakh Special Permit as laid down under Game Laws Notification Rule 3. These will be issued by the Game Warden on their signing a certificate to the effect that they have no intention of crossing the frontier either into

Chinese Turkistan or Tibet. For the purpose of the rules the Ladakh District will be held to commence:—

(*a*) At Bot Kharbu.
(*b*) At the Chorbat Pass.
(*c*) At the village of Hundar on Shyok river.

N. B.—The above rule applies to sportsmen only, should they wish to be accompanied by their wives or other persons who have not a shooting permit, application for a special permit must be made to the British Joint Cammissioner through the Game Warden.

Division of Shooting Season.

2. The Ladakh Season is divided into two periods, *i.e.*, first period—15th April to 14th July, 2nd period—15th July to 15th October.

No shooting is permitted in either the Ammon or Sharpu blocks except during the above periods.

Permits for the 1st period will be issued by the priority of application on arrival in Kashmir territory.

Permits for the 2nd period by priority of application from any place on or after January 2nd in each year. Applications for permits should be sent to the Game Warden, Srinagar.

Sportsmen who have registered their names for the 2nd period and who are unable to avail themselves of the permits are requested to inform the Game Warden immediately so that the blocks may be allotted to other applicants.

N. B.—Except in special cases which must be referred to the British Joint Commissioner, Ladakh guns for the first and second periods will not be permitted to enter the Ladakh Shooting District, as above laid down, before the 15th April and 15th July respectively.

Definition of areas now open and restrictions as to guns.

3. In the shooting season of————————the number of guns allowed to shoot Ovis Hodsoni (Ammon) will be 8 in each period, and Sharpu 10 in each period. Of these 3 only in each period will be permitted to shoot in the Changchanmo area.

Fixed blocks will be allotted to each sportsman by priority of application. Each sportsman will be allowed 1 Ammon block and also 1 Sharpu block.

Those permitted to shoot in the Changchanmo area, may be granted an Ammon block in addition to the Changchanmo area.

N. B.—The Game Warden reserves to himself the right to allot the Ammon block in the Changchanmo area to one of the guns holding Changchanmo permit in each period.

The remaining Sharpu blocks will be available for other sportsmen by priority of application, *vide* rule 2. No sportsman may shoot any species of game in a block allotted to another gun.

All the rest of the country not included in the blocks except the Changchanmo, may be shot over by any sportsman holding a Ladakh Permit.

In addition to the block No. 13 the stock Nullah (not Shang) is available for holders of Rs. 50 special winter licence for Ladakh.

The following blocks have been provisionally made in the Ladakh District.

A—OVIS AMMON.

(1) The tributaries of the Indus from Dumchok to Koyul.

(2) The watershed of the Koyul river as far as its junction with the Indus, below this all tributaries, of the Indus, as far as big bend of the river at Dungti.

(3) The Hanle river has in as far as South of Hanle Monastery.

(4) The Hanle river basin South of (3).

(5) The tributaries of the Indus between the Hanle river and the Puga river.

(6) The country lying between 3 and 4 on the East, 5 on the North, and 6 on the West.

(7) The basin of the Salt Lake and tributaries of the Indus between (and including) the Puga river as far as the water of the Tiri Foo.

(8) The basin of the Tsomeriri lakes and the Phirsi Nullah.

(9) The Tiri Foo and the country lying to the North bounded by the Indus on the North and East, the Leh Kulu Road on the West and the watershed of Tsokr Camo plain on the South.

(10) The watershed of the Zara and Rukchen rivers.

(11) The watershed of the Marka river.

(12) The Kharnak Nullah.

(13) The triangular area lying between Choosbal on the North, the frontier on the East, the watershed of the Choosbal river and Chamatnag Foo on the West and the Indus on the South from Chamatnag to Dungti.

(14) The catchment area of the Pangong Lake to the North and West of 13 and the 14, and the Tangse river basin.

(15) The Changchanmo.

B.—SHARPU.

(1) The Igu and Chimre Nullah.

(2) Nang and Sabu.

(3) Phyang and Tara.

(4) Umla and Nimo.

(5) Bazgo and Myel.

(6) Likir and Suspul, and Waleh-Drokpa.

(7) Hemis-Shupka, Nurla and Khalsi.

(8) Damkar and Hanu.

(9) Hemiskot and Wanla.

(10) Iluchi and Lardu.

(11) The watershed of the Zaskar and Markha rivers below, but including the Skew Nullah.

(12) Rumpakh.

(13) Stock and Shang.

(14) Masho.

(15) Shera and Lokchey.

(16) Kamdok.

Of the above blocks the following will be available for shooting in 19——.

OVIS AMMON.

Blocks 2, 4, 5, 6, 8, 10, 11, 13 and 15.

SHARPU.

Blocks 1, 4, 5, 6, 8, 9, 11, 12, 14, 15 and 16.

The killing of Sharpu is forbidden on the Maidan lying to the North and South of the Treaty Road between Likir Nullahs and Buzgo.

Rules regarding shooting in Changchanmo area.

4. Sportsmen obtaining permission to shoot in Changchanmo should apply for a special *Parwana* from the British Joint Commissioner Ladakh without which no transport will be obtainable to cross the Marsemik La.

5. Sportsmen are warned that they are expressly forbidden to cross the frontier of Chinese Turkistan or Tibet without special permission from the Government of India. The Frontier villagers are strictly forbidden to provide transport beyond the limits of Kashmir territory, unless the employer has a special permit.

Prohibition regarding crossing the frontier.

6. The Jammu and Kashmir Game Laws will apply in all respects to sportsmen shooting in the Ladakh Shooting District.

The Jammu and Kashmir Game Laws, to apply.

The names of all sportsmen obtaining permission to shoot in the Ladakh Shooting District will be notified by the Game Warden to the British Joint Commissioner Leh.

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THE MUNICIPAL ACT, 1970.

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THE MUNICIPAL ACT, 1970.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's No. 4993, dated 14th October 1913.)

WHEREAS it is expedient to make better provision for the administration of Municipalities in the Jammu and Kashmir State, it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Title, Extent and Commencement.

1. (a) This Act may be called the Jammu and Kashmir State Municipal Act, 1970.

(b) It extends to the territories of His Highness the Maharaja Sahib of Jammu and Kashmir State.

(c) It shall come into force on such date as His Highness the Maharaja Sahib may, by notification in the Jammu and Kashmir Government Gazette, appoint in this behalf.

Repeal.

2. (a) This Act repeals Municipal Act No. 16, of Samvat 1946.

Saving Clause.

(b) But all Municipal limits defined, appointments, rules, regulations, bye-laws and orders made, notifications and notices issued, taxes, tolls, rates and fees imposed or assessed, contracts entered into and suits instituted under the said Act shall, so far as may be, be deemed to have been respectively defined, made, issued, imposed or assessed and entered into and instituted under this Act.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context:—

(1) "Municipality" means any local area declared by or under this Act to be a Municipality.

(2) 'Building" means any house, hut, out-house, shed, super-structure and stable whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever and includes a wall and a well.

(3) "Bye-laws" and "Bye-law" mean respectively the regulations made or to be made by the Committee at a special meeting under the authority of this Act and any one of such regulations duly sanctioned by the Government.

(4) "Occupier" includes an owner in actual occupation of his own land or building, and also any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used; for the purposes of Chapter V, occupier shall include hotel-keeper, lodging house-keeper, and any owner whose premises are let to more than one tenant.

(5) "Erect" and "Re-erect" any building includes:—

(a) any material alteration or enlargement of any building;

(b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;

(c) the conversion into more than one place for human habitation of a building originally constructed as one such place;

(d) the conversion of two or more places of human habitation into a greater number of such places;
(e) such alterations of building as effect an alteration of its drainage or sanitary arrangements, or materially effect its security;
(f) the addition of any rooms, buildings, out-houses, or other structures to any building, and
(g) the construction in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street or land.

(6) "Rules" and "Rule" mean respectively the rules made or to be made and notified by the Government under the authority of this Act and any one of such rules.

(7) "Committee" means Municipal Committee established by or under this Act.

(8) "Owner" includes the person for the time being receiving the rent of land or buildings or either of them, whether on his own account, or as agent or trustee for any person or society, or for any religious or charitable purpose, or who would so receive the same if the land or building were let to a tenant.

(9) "Public street" shall mean any street, road, bridge, thoroughfare or passage, over which the public have a right of way and includes drains.

(10) "Vehicle" shall include bicycles, tricycles, and automotor cars, and every wheeled conveyance which is used or capable of being used on a public street.

(11) "Boat" shall mean any boat used or capable of being used on water as a means of conveyance or habitation and shall include steam or motor launches.

CHAPTER II.

CONSTITUTION OF MUNICIPALITIES.

Procedure for constituting Municipality.

4. (1) The Government may, by notification, declare any town or group of towns together, a Municipality under this Act.

(2) Every such notification shall define the limits of the local area to which it relates.

(3) A copy of every notification under this section with a vernacular translation shall forthwith be affixed in some conspicuous places within that area and published in the Jammu ane Kashmir Government Gazette in three consecutive issues.

(4) The Government may, by notification, direct that all or any of the rules made under this Act shall, with such exceptions and adaptations as may be considered necessary, apply

to the local area constituted as Municipality under this section, and such rules shall forthwith apply to such Municipality.

(5) A Committee shall come into existence at such time as the Government may, by notification, appoint in this behalf.

Notification to alter limits of Municipality.

5. The Government may, by notification, and in such other manner as it may determine, include within a Municipality any local area in the vicinity of the same and defined in the notification.

Notification to excluding area from Municipality.

6. The Government may, by notification, and in such other manner as it may deem fit, exclude from a Municipality any local area comprised therein and defined in the notification, and this Act shall forthwith cease to apply thereto.

CHAPTER III.

COMMITTEES.

Constitution of Committees.

Constitution of Committees.

7. There shall be established for each Municipality, a Committee having authority over the Municipality and consisting of such number of members not less than 5, as the Government may fix in this behalf.

Appointment and election of members.

8. Every such Committee shall consist of members appointed by the Government either by name or by office, or of members elected from among the inhabitants in accordance with rules made under this Act, or partly of the one and partly of the other as the Government may, by notification, direct: Provided that, unless the Government shall otherwise direct, the elected members shall not exceed [1]one-third of the whole Committee

Terms of office of members.

9. (1) If a member of Committee is appointed by office, the person for the time being holding the office shall be a member of the Committee until the Government shall otherwise direct.

(2) The term of office for which all other members of Committee shall be appointed and elected respectively, shall be fixed by the Government by rules made under this Act, and

[1]A clear elected majority is provided *vide* Finance Minister's Press Note, published in Government Gazette dated 9th Assuj 1993.

may be so fixed as to provide for the retirement of members by rotation, but shall not exceed three years.

(3) An out-going member, shall, unless the Government otherwise directs continue in office until the election or appointment of his successor is notified.

(4) An out-going member may, if otherwise eligible, be re-elected or re-appointed.

Power of the Government over the constitution of Committee.

[1]**10.** Notwithstanding anything in the foregoing sections of this chapter the Government may, at any time, for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification direct,

(a) that the number of seats on any Committee shall be increased or reduced;

(b) that any places on a Committee which are required to be filled by election shall be filled by appointment, if a sufficient number of members has not been elected;

(c) that a seat on any Committee which is then filled by election shall thenceforth, when vacant, be filled by appointment;

(d) that a seat on any Committee then filled by appointment shall thenceforth, when vacant, be filled by election;

(e) that the seat, of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly, notwithstanding anything in this Act or in the rules made thereunder.

Resignation of member of Committee.

11. Any member of Committee, who may wish to resign, may forward his writted resignation through the President of the Committee to the Minister-in-charge, and on his resignation being accepted he shall be deemed to have vacated his office.

Power of the Government as to removal of members.

[2]**12.** (1) The Government may by notification, remove any member of Committee:—

(a) If he refuses to act, or becomes, in the opinion of the Government, incapable of acting, or has been declared a bankrupt or an insolvent or has been convicted of any such offence or subjected by a criminal court to any such order as implies, in the opinion of the Government, a defect of character which unfits him to be a member;

(b) If he has been declared by notification to be disqualified for employment in, or has been dismissed from the public service and the reason for the disqualification or dismissal is

[1]Section 10 substituted *vide* Act XI of 1990 published in Government Gazette dated 2nd Chet, 1990.

[2]Section 12 substituted *vide* Act XI of 1990 published in Government Gazette dated 2nd Chet 1990

such as implies, in the opinion of the Government, a defect of character which unfits him to be a member;

(c) if he has without reasonable cause in the opinion of the Government absented himself for more than three consecutive months from the meetings of the Committee;

(d) if, his continuance in office, is in the opinion of the Government, dangerous to the public peace or order;

(e) if in opinion of the Government, he has flagrantly abused his position as a member of the Committee or has through his negligence or misconduct been respons ble for the loss, or misapplication of any money or property of the Committee;

(f) in the case of an elected member, if he has, since his election, become subject to any disqualification which, if it had existed at the time of election, would have rendered him inelligible under any rule for the time being in force regulating the qualifications of candidates for election, or if it appears that he was at the time of his election subject to any such disqualification; or

(g) if, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the Committee; or on behalf of or against the Government where in the opinion of the Government such action or appearance is contrary to the interests of the Committee:

Provided that before the Government notifies the removal of a member under this section the reasons for his proposed removal shall be communicated to the member concerned and he shall be given an opportunity of tendering an explanation in writing

(2) A person removed under this section or whose seat has been vacated under the povisions of section 10 (e) or whose election has been declared void for corrupt practices or intimidation under the provisions of any rule made by the Government under section 146, or whose election the Government has under section 18 refused to notify, shall be disqualified for a period not exceeding five years.

Casual vacancies on Committee.

13. (1) When the place of a nember of Committee appointed or elected is vacant, the Government may, but subject to the rules made under this Act fill his place by appointment, or election, as the case may be, of a new member.

(2) Every person elected or appointed to fill a casual vacancy, shall hold his seat for the time and subject to the conditions upon which it was tenable by the person in whose place he has been so elected or appointed, and no longer, but he may, if otherwise qualified, be re-elected or re-appointed.

14. Every Committee shall be a body corporate by the name of the Municipal Committee of its Municipality, and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and subject to the provisions of this Act, or of any rules made thereunder to transfer with the sanction of the Government, any property held by it, to contract and to do all other things necessary for the purposes of its constitution; and may sue, and be sued in its corporate name.

Incorporation of Committee.

15. Every member of Committee shall be deemed to be a Municipal Commissioner within the meaning of every enactment for the time being in force.

Member of Committee to be Municipal Commissioner.

President and Vice-President.

[1]**16.** (1) The Government may appoint a President who will be paid from Municipal Funds, or it may appoint an official to be Honorary President. The appointment in the former case shall be on one year's probation, which will be followed by confirmation with the Government sanction, provided that satisfactory work has been rendered during the probationery period. The appointment of an Honorary President shall ordinarily be for a period not exceeding three years, which may be extended if the Government thinks fit.

Appointment of President.

(2) The Government may appoint, from time to time, one or two of the members of the Committee to be Vice-President or Vice-Presidents.

Appointment of Vice-President.

17. The term of office of a Vice-President shall not exceed two years, but if still a member, he shall be eligible for re-appointment.

Term of office of Vice-President.

18. Every election and appointment of a member or appointment of President and Vice-President of a Committee shall be notified.

Notification of election.

[2][Provided the Minister-in-charge of Municipalities, with the previous sanction of the Government, may refuse to notify the election of any person who could be removed from office by the Government under any of the provisions of section 12, or of any person whom the Government for any reason which it may deem to affect the public interest, may consider to be

[1]Section 16 (1) substituted *vide* Public Works Ministers Notification No. 1, dated 21st October, 1927 published in Government Gazette dated 8th Katik 1984.

[2]Proviso to section 18 added *vide* Act XI of 1990 published in Government Gazette dated 2nd Chet 1990.

unfitted to be a member of the Committee, and upon such refusal the election of such persons shall be void.]

Conduct of Business.

19. (1) Every Committee shall meet for the transaction of business at least once in every month.

Time for holding meeting.

(2) The President or, in his absence, a Vice-President may, whenever he thinks fit, and shall, on a requisition made in writing by not less than one-fifth of the members of Committee, convene either an ordinary or a special meeting at any other time.

19-A. (1) Every meeting of a Committee shall be either ordinary or special.

(2) Any business may be transacted at an ordinary meeting unless required by this Act or the rules thereunder to be transacted at a special meeting.

20. The quorum necessary for the transaction of business at a special meeting of a Committee shall be one-half and at an ordinary meeting one-third of the number of Committee actually serving at the time.

Quorum.

[1][Provided that if at any ordinary or special meeting of a Committee a quorum is not present the Chairman shall adjourn the meeting to such other day as he may think fit and the business which would have been brought before the General meeting if there had been a quorum present, shall be brought before and transacted at the adjourned meeting whether there be a quorum present then at or not.]

21. At every meeting of a Committee the President, if present, or in his absence or during the vacancy of his office, the senior Vice-President, present, and if there be no President or Vice-President present then such one of their number as the members present may elect, shall preside as Chairman.

Chairman of meeting.

22. Except as otherwise provided by this Act or the rules, all questions which come before any meeting of a Committee shall be decided by a majority of the votes of the members present, the Chairman of the meeting, in case of an equality of votes, having

Votes of majority decisive.

[1] Proviso to section 20 added *vide* State Council Resolution No. OXIX, dated 17th May 1926 published in Government Gazette dated 11th Sawan 1983.

a second or casting vote.

Record of Proceeding.

23. (1) Minutes of the proceedings at each meeting of a Committee shall be drawn up and recorded in a book to be kept for the purpose, shall be signed by the Chairman of the meeting or of the next ensuing meeting, and shall, at all reasonable times and without charge, be open to inspection by any inhabitant.

(2) A copy of every resolution passed at any meeting of a Committee shall, within three days from the date of the meeting, be forwarded to Minister-in-charge and to the Governor of the Province.

Bye-laws.

24. Every Committee may, from time to time, make bye-laws consistent with the Act and with the rules as to:—

(a) the time and place of its meeting;

(b) the manner in which notice of ordinary and special meetings and adjourned meetings shall be given;

(c) the conduct of proceedings at meetings and the adjournment of meetings;

(d) the custody of common seal and the purposes for which it shall be used;

(e) the appointment of sub-committees and their duties, the division of duties among the members of the Committee and the powers to be exercised by such members as are primarily responsible for the current executive administration, whether President, Vice-Presidents, members of sub-committees or individual members; and

(f) the person by whom receipts shall be granted on behalf of the Committee or money received under this Act;

[1][(g) the appointment, duties, executive powers, leave, suspension and removal of its officers and servants;

(h) appeal from executive orders of sub-committees, the President, Vice-President, members, officers and servants of the Committee; and

(i) all other similar matters.]

Delegation of Powers.

Extraordinary powers of President or Vice-President in case of emergency and delegation to the Minister.

25. (1) In cases of emergency the President, or in his absence or during the vacancy of his office, a Vice-President may direct the execution of any work or the doing of any act which the Committee is empowered to execute or do, and the immediate execution or do-

[1]Clauses (*g*), (*h*) and (*i*) of section 24 added *vide* Chief Minister's letter No. 55-3-P, dated 22nd September, 1917 published in Government Gazette dated 19th Magher 1974.

ing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing such work or doing such act shall be paid from the Municipal Fund:

Provided that every direction given under this section shall be reported to the next following meeting of the Committee.

(2) The President or Vice-Pesident shall not act under this section in contravention of any order of the Committee.

(3) The President or, in his absence or during the vacancy of his office, a Vice-President may prohibit, until the matter has been considered by the Committee, the doing of any act which is, in his opinion, undesirable in the public interest, provided that the act is one which the Committee has power to prohibit.

(4) No direction given under this section shall be questioned in any court on the ground that the case was not one of emergency.

(5) The Government may delegate to the Minister-in-charge of Municipalities any of its powers under this Act.

Delegation by Committee.

25-A. (1) The Committee may, with the approval of Minister-in-charge of the Municipalities and shall, if so required by the Minister, delegate to the President or the Health Officer, all or any of the powers conferred upon the Committee by sections:—

27. Employments of officers and servants.
70. Disposal of animals.
73. Cleaning of filthy building or land.
75. Requiring owners to clear away noxious vegetation.
76. Requiring hedges and trees to be trimmed.
80 and 81. Provision and repairs and closing of drains, privies, etc.
84. Requiring the removal of nuisance arising from tanks etc.
89. Disinfection of buildings and articles.
121 to 124 and 126 and 128. Powers of entry and inspection.

(2) The Committee may and shall, in like manner, delegate to the President or Vice-President its Powers under sections:—

50. Remission of tax.
53. Powers of entry.
66. Supply of water.
71. Power to require buildings, wells etc. to be secured.
72. Buildings etc. in dangerous condition.
101-A. Power over streets.

102. Power of temporary occupation.
104. Removal of projections.
107. Power to attach brackets for lamps.
125. Inspection of weights.
127. Search for inflammable and explosive articles.

Officers and Servants.

Appointment of Secretary, Engineer and Health Officer

26 There shall be appointed for any Municipality a Secretary and also a Sanitary Engineer, or one person with combined duties of Secretary and Sanitary Engineer and a Health Officer and other officers with such duties as may be assigned to them and with such pay as may be thought fit.

Employment of other officers and servants.

27. (1) The Committee shall appoint, promote, suspend, fine, reduce, transfer, grant leave and dismiss officers and servants on salary of Rs. 50 or less.

(2) The Minister-in-charge of Municipalities shall, in addition to the powers of Committee, exercise similar powers in respect of officers and servants on a salary of Rs. 200 or less. The sanction of the Government shall be necessary for officers on a salary of more than Rs. 200.

(3) The Minister-in-charge shall hear appeals against the orders of the Committee and his order shall be final, subject to revision by the Government.

Pension, leave allowance and provident fund.

28. (1) If an officer or servant of a Committee is a Government Official:—

(a) the Committee may, if his service are wholly lent to it, contribute to his pension, gratuity, and leave allowances in accordance with any general or special orders of the Government in force for the time being, and

(b) all officers and servants of the Committee, engaged previous to the date of passing of this Act, shall be considered permanent and pensionable servants of the State and shall be entitled to gratuity or pension under Pension Rules of the State, to be paid from Municipal funds.

(c) grant him leave, absentee or acting allowance.

(2) If an officer or servant of a Committee is not a Government official, the Committee may, subject to such conditions as the Government may prescribe:—

(a) if his pay is less than ten rupees a month, grant him a gratuity on retirement; or,

(b) establish, and maintain a Provident or Annuity fund and compel him to contribute thereto.

[1][(3) (a) In the absence of a written contract to the contrary, every officer or servant employed by a Committee, shall be entitled to one month's notice before discharge or to one month's wages in lieu thereof, unless he is discharged during a period of probation or for misconduct or was engaged for a special term and discharged at the end of it.

(b) Should any officer or servant employed by a Committee, in the absence of a written contract authorising him so to do, and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the Committee, he shall be liable to forfeit a sum, not exceeding one month's wages out of any wages due to him.

(c) Should any sweeper employed by a Committee, in the absence of a written contract authorising him so to do, and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the Committee, or neglect or refuse to perform his duties or any of them, he shall be liable to punishment of fine extending to two month's pay.

(d) The Government may, by notification, direct that, on and from a date to be specified in the notification, the provisions of sub-section (c) with respect to sweepers shall apply also to any specified class of servants employed by any Committee whose functions intimately concern the public health or safety.]

Contracts.

29. (1) A contract, whereof the value or amount exceeds two hundred rupees, shall not be executed until it has been sanctioned by the Minister-in-charge of the Municipalities.

Authority to contract and mode of accepting contracts

(2) Every contract made by or on behalf of a Committee whereof the value or amount exceeds 20 (twenty) rupees shall be in writing, and every such contract shall be signed by the President, or Vice-President and the Secretary.

(3) Every transfer of immoveable property belonging to any Committee must be made by an instrument in writing executed by the President, or Vice-President, and by at least two other members of Committee whose execution thereof shall be attested by the Secretary and this must be finally sanctioned in writing by the Government.

(4) No contract or transfer of the description mentioned in this section, executed otherwise than in conformity with the provisions of this section, shall be binding on the Committee or the Government.

[1]Section 28 (3) added *vide* Chief Minister's letter No. 9706/p-25/18, dated 7th February 1918 published in Government Gazette dated 5th Katik 1975.

30. (1) If any member, officer or servant of a Committee is, without the permission in writing of the Minister-in-charge, directly or indirectly interested in any contract made with that Committee, he may be removed from his position or post and such contract may be made null and void.

Penalty on member, officer or servant being interested in contract made with a Committee.

(2) No member, officer or servant of a Committee shall, by reason only of his being a shareholder in, or a member of, any incorporated or registered company, be held to be interested in any contract entered into between the said company and the Committee; but no such person as aforesaid shall take part in any proceedings of the Committee relating to any such contracts.

31. No suit shall be instituted against a Committee or against any officer or servant of a Committee, in respect of any act purporting to be done in its or his official capacity until the expiration of one month next after notice in writing has been, in the case of a Committee, delivered or left at its office, and in the case of an officer or servant, delivered to him, or left at his office or place of abode stating the cause of action, and the name and place of abode of the intending plaintiff, and the plaint must contain a statement that such notice has been so delivered or left.

Suit against Committee and its officers.

Provided that nothing in this section shall apply to any suit instituted for grant of injunction.

32. Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a Committee, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of of the Committee; and a suit for compensation for the same may be instituted against him by the Committee with the sanction of the Minister-in-charge in such court as the Government may direct.

Liability of members of Committee.

CHAPTER IV.

MUNICIPAL FUND AND PROPERTY.

33. There shall be formed for each Municipality a Municipal Fund and there shall be placed to the credit thereof:—

Municipal Fund.

(a) all sums received by or on behalf of the Committee under this Act or otherwise;

(b) all fines realised in cases in which prosecutions for offences committed within the Municipality are instituted under this Act or bye-laws in force at the time being;

(c) all fines and forfeitures for offences committed within the Municipality under [1]Police Ain No. 31, Motor Vehicles Act and Cruelty to Animals Act.

Application of Fund

34. The Committee shall set apart and apply out of the Municipal Fund such sum as may be required for:—

(1) the payment of any amounts falling due on any loan legally contracted by the Committee;

(2) establishment;

(3) the construction, maintenance, improvement, cleaning and repair of all public streets, bridges, embankments, drains, privies, latrines, urinals, tanks and water-courses;

(4) other charges, expenditure whereon may be declared by the Committee, with the sanction of the Government, to be an appropriate charge on the Municipal Fund, and the watering and lighting of streets;

(5) supply, storage and preservation from pollution of water, for the use of men and animals;

(6) the planting and preservation of trees and maintenance of Municipal gardens;

(7) the registration of births, marriages and deaths, public vaccination and any sanitary measure ;

(8) maintenance of hospitals for infectious diseases;

(9) all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants; and

(10) the holding of fairs and industrial exhibitions.

Custody of Municipal Funds

35. The Municipal Fund shall be kept in the State Treasury.

Property vested in Committee.

36. Subject to any special reservation, all property of the nature, specified hereinafter and situated within the Municipality, shall vest in, and be under the control of, the Committee.

(a) all public markets, slaughter houses, manure and nightsoil depots, public buildings of every description, and public streets which have been constructed or are maintained out of the Municipal Fund;

(b) all public streams, springs and works for the supply, storage and distribution of water for public purposes ;

(c) all refuse or filth or rubbish of any kind or dead bodies of animals, collected by the Committee within the Municipal limits;

(d) all public lamps and lamp posts;

[1]Now see Police Act (11 of 983)

(e) such other things which the Government may, from time to time, notify in the Jammu and Kashmir Government Gazette; and

(f) all land or other property transferred to the Committee by the Government or acquired by the Committee.

Management of public institutions.

37. The management and control and administration of every public institution maintained out of the Municipal Fund shall vest in the the Committee subject to such conditions as may be imposed by the Minister-in-charge of Municipalities.

Acquisition of land.

38. When any land, whether within or without the limits of a Municipality, is required for the purposes of this Act, the Government may, at the request of the Committee, proceed to acquire it under the provisions of the State Land Acquisition Act; and, on payment by the Committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the Committee.

CHAPTER V.

TAXATION.

Taxes which may be imposed.

39. (1) Subject to any general or special orders which the Government may make in this behalf, the Committee may impose, in the whole or any part of the Municipality, any of the following taxes with the previous sanction of the Government:—

(2) a tax payable by the owner, on buildings and lands;

(3) a tax on persons practising any profession or art or carrying on any trade or calling in the Municipality;

(4) a tax or toll or both on vehicles and animals and boats within the Municipality;

(5) an octroi on animals or goods or both brought within the octroi limits for consumption or use therein;

NOTE.—Until further orders, the octroi will be collected by the Customs Department and after deduction of collection expenses, not exceeding 10 % the receipts shall be paid to the Municipal Fund, *vide* His Highness' Order No. 1311, dated 25/28th June, 1927.

(6) for the purpose of constructing or maintaining works for the supply of water to the Municipality or paying the principal or interest or both of any loan raised for the construction of such works, a tax payable by the occupier, or if there be no occupier, by the owner on the annual value of such buildings

or lands as are so situated that their occupiers can benefit by the works;

(7) a tax payable by the cccupier of any building in respect of which the Committee has, in exercise of the powers conferred by section 98 of this Act, undertaken the house scavenging;

(8) lighting tax for providing lights in public streets and thoroughfares;

(9) any other tax that the Government may approve and sanction.

Procedure in imposing taxes.

40. (1) A Committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 39.

(2) When such a resolution has been passed, the Committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax may within 30 days from the publication of the said notice, submit his objection in writing to the Committee; and the Committee shall, at a special meeting, take his objection into consideration.

(4) If no such objection is received within the said period of 30 days, or if all such objections, having been considered as aforesaid, are deemed insufficient, the Committee may forward its proposal to the Government, with the objection (if any) which have been submitted as aforesaid and for such orders as Government may give.

(5) When any proposal of a Committee has been sanctioned by the Government, the Government shall notify the imposition of the tax and shall in the notificat on specify a date not less than three months from the date of the notification, on which the tax shall come into force.

(6) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.

Procedure for assessing immoveable property.

Preparation of assessment list.

41. The Committee shall cause an assessment list of all buildings and lands on which any tax is imposed to be prepared containing:—

(a) the name of the street or division in which the property is situated;

(b) the designation o the property, either by name or by number sufficient for identification;

(c) the names of the owner and occupier, if known;

(d) the annual value, area, or length of frontage on which the property is assessed; and

(e) the amount of the tax assessed thereon by the Committee.

Publication and completion of assessment list.

42. When the assessment list has been completed, the Committee shall give public notice thereof, and of the place where the list or a copy thereof may be inspected and every person claiming to be either owner or occupier of property included in the list and any authorised agent of such person shall be at liberty to inspect the list and to make extracts therefrom without charge.

Public notice of time fixed for revising assessment list.

43. (1) The Committee shall, at the time of the publication of such assessment list, give public notice of a time, not less than one month thereafter, when it will proceed to revise the valuation and assessment: and in all cases, in which any property is for the first time assessed, or the assessment thereof is increased, it shall also give notice thereof to the owner or occupier of the property.

(2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice, or orally or in writing at that time.

Settlement of list.

44. (1) After the objections have been enquired into and the persons making them have been allowed an opportunity of being heard either in person or by authorised agent, as they may think fit, and the revision of the valuation and assessment has been completed, the amendments made in the list shall be authenticated by the signatures of not less than two members of the Committee, who shall at the same time certify that no valid objection has been made to the valuation and assessment contained in the list, except in the cases in which amendments have been entered therein; and, subject to such amendments as may thereafter be duly made, the tax so assessed shall be deemed to be the tax leviable.

(2) The list, when amended under this section, shall be deposited in the Committee's office and shall there be open, during office hours, to all owners or occupiers of property comprised therein or the authorised agents of such persons, and a public notice that it is so open shall forthwith be published.

Further amendments of assessment list.

45. (1) The Committee may, at any time, amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any pro-

perty which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake, whether on the part of the Committee or of the assessee, or in the case of a tax, payable by the occupier by a change in the tenancy, after giving notice to any person affected by the the amendment, or a time, not less than one month from the date of service, at which the amendment is to be made.

(2) Any person interested in any such amendment may tender his objection to the Committee in writing before the time fixed in the notice, or orally or in writing at that time, and shall be allowed an opportunity of being heard in support of the same in person, or by authorised agent, as he may think fit.

New list need not be prepared every year.

46. It shall be in the discretion of the Committee to prepare a new assessment list every year, or to adopt the valuation and assessment contained in the list for any year, with such alterations as may in particular cases be deemed necessary, as the valuation and assessment for the year following, giving to persons affected by such alterations the same notice of the valuation and assessment as if a new assessment list had been prepared.

General Provisions.

Tax not invalid for defect of form.

47. No assessment and no charge or demand of any tax made under the authority of this Act shall be impeached or affected by reason of any mistake in the name, residence, place of business or occupation of any person liable to pay the tax, or in the description of any property or thing liable to the tax, or of any mistake in the amount of assessment or tax, or by reason of any clerical error or other defect of form, and it shall be enough in any such tax on property or any assessment of value for the purpose of any such tax if the property taxed or assessed is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof.

Powers of the Committee in regard to tax.

48. (1) A Committee may, with the sanction of the Minister-in-charge of the Municipalities, exempt in whole or in part, for any period not exceeding one year, from the payment of any such tax, any person who, by reason of poverty, may, in its opinion, be unable to pay the same and may renew such exemption as often as may be necessary.

(2) A Committee by a resolution passed at a special meet-

ing and confirmed by the Government, may:—

(a) abolish, suspend or reduce in amount any tax imposed under the foregoing sections; or

(b) exempt in whole or in part from the payment of any such tax, any person or class of persons or any property or description of property.

Powers of Government in regard to taxes.

49. (1) The Government may by order exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property.

(2) If at any time it appears to the Government, on complaint made or otherwise, that any tax imposed under the foregoing sections is unfair in its incidence or that the levy thereof or of any part thereof is injurious to the interests of the general public, it may require the Committee to take within a specified period measures to remove the objection; and, if within that period the requirement is not complied with to the satisfaction of the Government, the Government may, by notification, suspend the levy of the tax or of such part thereof until the objection has been removed.

Remission of tax on unoccupied immoveable propeity.

50. (1) When any property assessed to a tax under section 39, clause 2, has remained unoccupied and unproductive of rent throughout the year or the period in respect of which any instalment is payable, the Committee shall remit the amount of the tax or of the instalment, as the case may be:

Provided that no such remission shall be granted unless notice in writing of the circumstances under which it is claimed has been given to the Committee within the first month after the expiry of the period in respect of which it is so claimed.

(2) When any such property as aforesaid—

(a) has not been occupied or productive of rent for any period of not less than 60 consecutive days, or

(b) consists of separate tenements, one or more of which has or have not been occupied or productive of rent for any such period as aforesaid, or

(c) is wholly or in greater part demolished or destroyed by fire or otherwise,

the Committee may remit such portion (if any) of the tax or instalment as it may think equitable.

(3) The burden of proving the facts entitling any person to claim relief under this section shall lie upon him.

Duty of furnishing true information regarding liability to Municipal taxation.

51. Every person shall, on the demand of an officer duly authorised by the Committee in this behalf, furnish such information as may be necessary in order to ascertain whether such person is liable to pay any Municipal

Tax; and every hotel or lodging-house keeper or secretary of a residential club shall also, on demand made as aforesaid, furnish a list of all persons residing in such hotel, lodging-house or club.

Notice to be given to the Committee of all transfers of title of persons primarily lisble to payment of property tax.

52. (1) Whenever the title to or over any building or land of any person primarily liable for the payment of property taxes on such property is transferred, the transferer shall, within three months of the act of transfer, give notice in writing of such transfer to the Committee, failing which he shall continue to be liable for the payment of all taxes till such notice is given or the transfer is otherwise recorded in the Committee's books.

(2) But nothing in this section shall be held to diminish the liability of the transferee for the said taxes, or to affect the prior claim of the Committee for the recovery of the taxes due thereupon.

Power of entry for the purposes of valuation or taxation

53. The Committee may authorise any person—

(a) after giving 24 hours' notice to the occupier, or, if there be no occupier, to the owner, of any building or land, at any time between sunrise and sunset, to enter, inspect and measure any building for the purpose of valuation;

(b) to enter and inspect any stable, coach-house or other place wherein there is reason to believe that there is any vehicle, vessel or animal liable to taxation under this Act or for which a licence has not been duly taken out.

Octroi to be controlled by Octroi Act.

54. The levy of octroi and other matters connected therewith shall be governed, regulated and controlled by the provisions of the State Octroi Act of 1958.

Taxes when payable.

55. Subject to the provisions of sections 40 (5) and 44, any tax imposed under this chapter and payable periodically shall be payable on such dates and in such instalments (if any) as the Committee, with the previous sanction of the Minister-in-charge, may, from time to time, direct.

Recovery of taxes payable by owner.

56. (1) When any sum is due on account of a tax payable under this Act in respect of any property by the owner thereof, the Committee shall cause a bill for the amount, stating the property and the period for which the charge is made, to be delivered to the person liable to pay the same.

(2) If the bill be not paid within ten days from the delivery thereof, the Committee may cause a notice of demand to be served on the person liable to pay the same, and, if he

does not, within seven days from the service of the notice, pay the sum due, with any fee leviable for the notice or show sufficient cause for non-payment, the sum due, with the fee, shall be deemed to be an arrear of tax.

(3) The amount of every such arrear, besides being recoverable in any other manner provided by this Act, shall, subject to any claim on behalf of the Government, be a first charge on the property in respect of which it is payable, and shall be recoverable through the Governor of the Province as arrears of land revenue.

Provided that nothing in this sub-section shall authorise the arrest of a defaulter.

(4) If any tax or sum leviable under this Act from the owner is recovered from the occupier, such occupier shall, in the absence of any contract to the contrary, be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner.

Rules for Recovery of Municipal Claims.

[1]**57.** I (1) When any arrears of tax, water rate fee or any other money claimable by a Committee under this Act shall have become due, the Municipal Committee shall, with the least practicable delay, cause to be presented to the person liable for the payment thereof, a bill for the sum claimed as due.

Presentation of the bill.

(2) Every such bill shall specify—

Contents of bill.

(a) the period for which, and

(b) the property, occupation or thing in respect of which, the sum is claimed, and shall also give notice of—

(i) the liability incurred in default of payment and of

(ii) the time within which an appeal may be preferred as hereinafter provided against such claim.

(3) If the sum for which any bill has been p esented as aforesaid is not paid into the Municipal office or to a person authorised by any rule in that behalf to receive such payments, within fifteen days from the presentation thereof, the Municipal Committee, or an officer authorised by the Municipal Committee in this behalf, may cause to be served upon the person liable for the payment of the said sum a notice of demand.

If bill not p id within 15 d ys notice of demand to issue.

[1]Section 57 substituted *vide* Notification No. 13, dated 16th May, 1930 published in Government Gazette dated 9th Jeth 1987.

11. (1) If the person liable for the payment of the said sum does not, within fifteen days from the service of such notice of demand, either—

In what cases warrant may issue.

(a) pay the sum demanded in the notice, or

(b) show cause to the satisfaction of the Municipal Committee or such officer as the Municipal Committee may authorise in this behalf, or

(c) prefer an appeal in accordance with the provision hereinafter mentioned,

such sum with all costs of the recovery may be levied under a warrant caused to be issued by the Municipal Committee or an officer duly authorised by it, by distress and sale of the moveable property of the defaulter.

(2) Every warrant issued under this section shall be signed and sealed by the President of the Municipal Committee causing the same to be issued.

Warrant by whom to be signed.

(3) It shall be lawful for any Municipal Officer to whom a warrant issued under sub-section (2) is addressed if the warrant contains special order authorising him in this behalf, but not otherwise, to break open, at any time between sunrise and sunset, any outer or inner door or window of a building, in order to make the distress directed in the warrant, if he has reasonable grounds for believing that such building contains property which is liable to seizure under the warrant, and if after notifying his authority and purpose and duly demanding admittance, he cannot otherwise obtain admittance. Provided that such officer shall not enter or break open the door of any apartment appropriated for women, until he has given three hours' notice of his intention, and has given such women an opportunity to remove.

Power of entry under special order.

(4) It shall also be lawful for such officer to distrain wherever it may be found, any moveable property of the person therein named a defaulter, subject to the following conditions, exceptions and exemptions namely:—

Warrant how to be executed.

(a) The following property shall not be distrained:—

(i) the necessary wearing apparel and bedding of the defaulter, his wife and children,

(ii) the tools of artisans,

(iii) when the defaulter is an agriculturist, his implements of husbandry, seed-grain, and such cattle as may be necessary to enable the defaulter to earn his livelihood,

(b) The distress shall not be excessive, that is to say, the property distrained shall be as nearly as possible propor-

tionate in value to the amount recoverable under the warrant, and if any articles have been distrained which, in the opinion of a person authorised by or under sub-section (2) to sign a warrant, should not have been so distrained, they shall forthwith be returned.

(c) The officer shall on seizing the property forthwith make an inventory thereof, and shall before removing the same give to the person in possession thereof at the time of seizure, a written notice that such property will be sold as shall be specified in such notice.

III. (1) When the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody together with the amount to be levied is likely to exceed its value, the President shall at once give notice to the person in whose possession the property was when seized, to the effect that it will be sold at once, and shall sell it accordingly unless the amount named in the warrant be forthwith paid.

Sale of goods distrained.

(2) If not sold at once under sub-section (1) the property seized or a sufficient portion thereof may, unless the warrant is suspended by the person who signed it, or the sum due by the defaulter together with all costs incidental to the notice, warrant, and distress and detention of the property, is paid, be, on the expiry of the time specified in the notice served by the officer executing the warrant, sold by public auction under the orders of the Municipal Committee, or an officer duly authorised by the Committee in this behalf and the proceeds, or such part thereof as shall be requisite, shall be applied in discharge of the sum due and of all such incidental costs as aforesaid.

Application of proceeds of sale.

(3) The surplus, if any, shall be forthwith credited to the Municipal Fund, notice of such credit being given at the same time to the person from whose possession the property was taken but if the same be claimed by written application to the Municipal Committee within one year from the date of the notice a refund thereof shall be made to such person. Any sum not claimed within one year from the date of such notice shall be the property of the Municipal Committee.

Fees and costs! chargeable.

IV. Fees for—

(a) every notice issued under sub-section(3) of Rule I,
(b) every distress made, and
(c) the cost of maintaining any live-stock seized under this section,

according to the rates respectively specified in such behalf by

the Municipal Committee shall be included in the costs of recovery.

Appeals.

Appeals against any notice of demand issued under sub-section (3) of I, may be made to the Minister-in-charge of Municipalities according to section 138 of this Act.

But no such appeal shall be heard and determined unless:—

(a) the appeal is brought within fifteen days next after service of the notice of demand complained of and

(b) an application in writing, stating the grounds on which the claim of the Municipal Committee is disputed, has been made to the Municipal Committee as follows, that is to say:—

(i) in the case of a rate on buildings or lands, within time fixed in the notice of the assessment or alteration thereof, according to which the bill is prepared,

(ii) in the case of any other claim for which a bill has been presented under sub-section (1) of I, within 15 days next after the presentation of such bill; and

(c) the amount claimed from the appellant has been deposited by him in the Municipal office.

Liability of land, building, etc., for rates

All sums due on account of any tax imposed in the form of a rate on lands or buildings, or on both, shall, subject to prior payment of land revenue, if any, due to Government thereupon, be a first charge upon the building or land, in respect of which such tax is leviable, and upon the moveable property, if any, found within or upon such building or land, and belonging to the person liable for such tax or taxes:

Provided that no arrears of any such tax shall be recovered from any occupier who is not the owner, if it has been due for more than one year or for a period during which such occupier was not in occupation.

Recovery of tolls.

58. (1) In case of non-payment of any toll on demand, the officer empowered to collect the same may seize any vehicle, vessel or animal on which the toll is chargeable, or any part of its burden of sufficient value to satisfy the demand.

(2) The Committee, after the lapse of five days from the seizure, and after the issue of a proclamation fixing the time and place of sale, may cause any property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand, with the expenses, occasioned by the seizure, custody and sale thereof, unless the demand and expenses are in the meantime paid:

Proivided that, by order of the President or a Vice-President, articles of a perishable nature, which could not be kept for five days without serious risk of damage, may be sold after the lapse of such shorter time as he may, having regard to the nature of the articles, think proper.

Power to lease the collection of taxes.

59. The collection of any toll may be leased by the Committee, with the previous sanction of the Minister-in-charge, for any period not exceeding one year; and the lessee and all persons employed by him in the management and collection of the toll shall in respect thereof—

(a) be bound by any orders made by the Committee for their guidance;

(b) have such powers exercisable by officers of a Committee under this Act as the Committee may, from time to time, confer upon them with the sanction of the Minister-in-charge;

(c) be entitled to the same remedies and be subject to the same responsibilities as if they were employed by the Committee for the management and collection of the toll.

Appeals against Taxation.

60. (1) An appeal against the assessment or levy of, or against the refusal to refund, any tax under this Act shall lie to the Minister-in-charge, whose orders shall be final.

(2) If, on the hearing of an appeal under this section, any question as to the liability to, or the principle of assessment of, a tax arises on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion, or on the application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained and refer the statement with his own opinion on the point for the decision of the High Court.

(3) On a reference being made under sub-section (2) the subsequent proceedings in this case, shall be, as nearly as may be, in conformity with the rules relating to the references to the High Court contained in the State Civil Procedure Code.

(4) In every appeal the costs shall be in the discretion of the officer deciding the appeal.

(5) Costs awarded under this section to the Committee shall be recoverable by the Committee as though they were arrears of a tax due from the appellant.

(6) If the Committee fail to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarding the costs may order the person having the custody of the balance of the Municipal Fund to pay the amount.

61. (1) No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the date of its final determination, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made:

Limitation of appeal.

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period.

(2) No appeal shall be entertained unless the appellant has paid all other Municipal taxes due from him to the Committee up to the date of such appeal.

CHAPTER VI.

EXTINCTION AND PRFVENTION OF F'RE.

62. For the prevention and extinction of fire the Committee may establish and maintain a fire brigade and may provide any implements, machinery or means of communicating intelligence which the Committee may think necessary for the efficient discharge of their duties by the brigade or the Committee may transfer the control to the Police Department, but all costs for the maintenance of the fire brigade shall be paid from Municipal Funds.

Establishment & maintenance of fire brigade.

NOTE.—The control and the maintenance of the Fire Brigade Department is at present vested in the Police Department *vide* State Council Resolution No. XXXIV dated 18th August 1893.

63. (1) On the occasion of a fire in a Municipality any Magistrate, the secretary of the Committee, any member of Committee, any member of a fire brigade, maintained by the Committee then and there directing the operations of men belonging to the brigade, and any police officer above the rank of a constable, may :—

Power of fire brigade and other persons for suppression of fires.

(a) remove or order the removal of any person who by his presence interferes with or impedes the operation for extinguishing the fire or for saving life or property;

(b) close any street or passage in or near which any fire is burning;

(c) for the purpose of extinguishing the fire break into or through or pull down, or cause to be broken into or through or pulled down, or used for the passage of houses or other appliances, any premises;

(d) cause mains and pipes to be shut off so as to give greater presusre of water in or near the place where the fire has occurred;

(e) call on the persons in charge of any fire engine to render such assistance as may be possible,

and

(f) generally, take such measures as may appear necessary for the preservation of life or property.

When any State building is endangered by such a fire the officer for the time being in charge of the building may exercise the powers conferred on a Magistrate by this sub-section.

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) in good faith.

(3) Any damage done in the exercise of a power conferred or a duty imposed by this section shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.

Limitation of operation of chapter.

64. The power conferred by the last foregoing section shall be subject to any regulations, conditions or restrictions which may be imposed by rule.

CHAPTER VII.

WATER SUPPLY.

Provisions of water.

65. The Committee may provide a supply of drinking water within the Municipality, and shall cause such tanks, reservoirs, engines, pipes, taps, and other works as may be necessary for the said purpose to be constructed and maintained whether within or without the Municipality, and shall erect sufficient stand-pipes or other conveniences for the gratuitous supply of water to the public.

Supply of water to connected premises.

66. The Committee may, on application by the owner of any building, arrange for supplying water from the nearest main to the same for domestic purposes in such quantities as it deem proper, subject to the rules which the Committee may ame with the approval of the Government.

CHAPTER VIII.

POWERS FOR SANITARY AND OTHER PURPOSES.

Bathing and Washing Places.

Bathing and washing places.

67. The Committee may set apart suitable places for the purposes of bathing and may specify the times at which, and the sex and class of the persons by whom, such places may be used, and may also set apart suitable places for washing animals or clothes, or for any other purpose connected with the health, cleanliness or comfort of the inhabitants and may, by public notice, prohibit bathing or washing animals or clothes in any public place not so set apart, or at times or by persons other than those specified, and any other act by which water in public places may be rendered foul or unfit for use.

Fixation of places for washing infected clothes.

68. The Committee may fix, by notice, places at which articles of clothing, bedding or other articles which have been exposed to infection shall be washed and no person shall wash any such article at any place not so fixed.

Burial and Burning Places.

Powers in respect of burial and burning places.

69. (1) The Committee may, with the approval of the Minister-in-charge, by public notice, order any burial or burning ground situate within Municipal limits or within one mile thereof, which is certified by the Chief Medical Officer or Health Officer to be dangerous to the health of persons living in the neighbourhood, to be closed from a date to be specified in the notice, and shall, in such case, if no suitable place for burial or burning exists within a reasonable distance, provide a fitting place for the purpose.

(2) Private burial places in such burial-grounds, may be excepted from the notice, subject to such conditions as the Committee may impose in this behalf.

(3) No burial or burning ground, whether public or private, shall be made or formed within the Municipality or at a distance of less than one mile from any of its limits, after the commencement of this Act without the permission in writing of the Committee.

(4) The Committee may, by public notice, prescribe or prohibit routes for the removal of corpses to burial or burning grounds.

Dangerous Animals.

70. The Committee may authorise any person to remove or confine any animal suffering or reasonably suspected to be suffering of rabies or other infectious disease, and for such act no compensation shall be payable: Provided that no animal whose destruction is prohibited under [1]section 219 of Ranbir Dand Bidhi, shall be destroyed.

Disposal of animals.

Dangerous or Insanitary Buildings or Places.

71. Should any building or any well, tank, reservoir, pool, depression or excavation be in a condition as may be deemed by the Committee to be dangerous to the persons dwelling or working therein or in the neighbourhood or to persons passing by, the Committee may, by notice, require the owner or occupier thereof to repair, protect or enclose the same; and should it appear to it to be necessary in order to prevent imminent danger, it shall forthwith take such steps to avert the danger as may be necessary.

Powers to require buildings, wells, tanks, etc to be secured.

72. Should any building, wall or structure, or any thing affixed thereto, or any bank or tree, be deemed by the Committee to be in a ruinous state or in any way dangerous, it may, by notice, require the owner thereof forthwith either to remove the same or to cause such repairs to be made to the building, wall, structure, or bank as the Committee may consider necessary for the public safety, and should it appear to be necessary in order to prevent imminent danger, the Committee shall forthwith take such steps, at the expense of the owner, to avert the danger as may be necessary.

Buildings etc. in dangerous state.

73. Should the owner or occupier of any building or land suffer the same to be in a filthy or unwholesome state, the Committee may, by notice, require him, within 24 hours, to cleanse the same or otherwise put it in a proper state and thereafter to keep it in a clean and proper state, and, if it appear to be necessary for santitary purposes to do so, may, at any time by notice, direct the occupier of any building to lime-wash or otherwise cleanse the said building inside and outside in the manner and within a period to be specified in the notice.

Cleaning of filthy building or land.

74. Should any building, or any part of any building appear to the Committee to be unfit for human habitation in consequence of the want of proper means of drainage or ventilation or any sufficient reason, the Committee may,

Power to prohibit use for human habitation of buildings unfit for such use.

[1]Section 298 A Ranbir Penal Code.

by notice, prohibit the owner or occupier thereof from using the same for human habitation or suffering it to be so used, until it has been rendered fit for such use to the reasonable satisfaction of the Committee.

Powers to require owner to clear away noxious vegetation.

75. The Committee may, by notice, require the owner or occupier of any land to clear away and remove any thick vegetation or undergrowth which may appear to the Committee to be injurious to health or offensive to the neighbourhood.

Powers to require hedges and trees to be trimmed.

76. The Committee may, by notice, require the owner or occupier of any land to cut or trim within three days the hedges growing thereon and bordering on any street, or any branches of trees growing thereon which overhang any street and obstruct the same or cause danger, or which so overhang any well, tank or other source from which water is derived for public use as to be likely to pollute the water thereof.

Power to require untenanted buildings becoming a nuisance to be secured or enclosed.

77. The Committee may, by notice, require the owner or part owner, or person claiming to be the owner or part owner, of any building or land which, by reason of abandonment or disputed ownership or other cause, has remained untenanted and become a resort of idle and disorderly persons or otherwise a nuisance, to secure or enclose the same whithin a reasonable time fixed in the notice.

Prohibition of cultivation, use of manure or irrigation, injurious to health.

78. If the Chief Medical Officer, or Health Officer certifies that the cultivation of any description of crop or use of any kind of manure or the irrigation of land in any specified manner :—

(a) in any place within the limits of any Municipality, is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood,

or

(b) in any place within or beyond the limits of any Municipality is likely to contaminate the water supply of such Municipality or otherwise render it unfit for human consumption, the Government may, by notification, prohibit the cultivation of such crops, the use of such manure or the use of the method of irrigation so reported to be injurious or impose such conditions with respect thereto as may prevent such injury or contamination:

Provided that when on any land to which such notification applies, the act prohibited has been practised during the five years next preceding the notification in the ordinary course of husbandry, compensation shall be paid from the Munici-

pal Fund to all persons interested therein for any damage caused to them by the effect of such notification.

Dangerous or Offensive Trade.

79. (1) No place within a Municipality which the Municipality may prohibit shall be used for any of the following purposes:—

Regulation of offensive and dangerous trade.

melting tallow or boiling bones, offal, or blood;

as a soap-house, oil-boiling house, dyeing house, or tannery;

as a brickfield, brick kiln, pottery or lime kiln;

as any other manufactory, engine house or place of business from which offensive or unwholesome smells, noises or smoke arise;

as a yard or depot for trade in hay, straw, thatching grass, wood, charcoal or coal or other dangerously inflammable material;

as a store house for any explosive or for petroleum or any inflammable oil or spirit;

except under a licence to be issued by the Committee in such form and on such fees as the Government may direct, which shall be renewable annually, or after such longer time as the Committee may fix.

(2) The licence shall not be withheld unless the Committee considers that the business, which it is intended to establish or maintain, would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

Drains and Privies.

80. (1) The Committee may, by notice, require the owner of any building or land to provide, add to, move, remove, repair, alter or otherwise change in form, or shut out from view any drain, urinal, privy, cesspool or other receptacle for filth or refuse and it may prescribe the pattern according to which new ones should be made.

Provision of drains, privies, etc.

(2) The Committee may, by notice, require any person employing more than 20 workmen or labourers to provide such latrines and urinals as it may think fit and to cause the same to be kept in proper order and to be daily cleaned.

81. The Committee may, by notice require any person who may construct any new drain, privy, latrine, urinal, cesspool or receptacle for filth or refuse without its permission in writing or contrary to its directions or regu-

Repair and closing of drains, privies, latrines, urinals and cesspools.

lations or the provisions of this Act or who may construct, rebuild or open any drain, privy, latrine, urinal, cesspool or receptacle for filth or refuse which it has ordered to be demolished or stopped up or not to be made, to demolish the drain, privy, latrine, urinal, cesspool, or receptacle, or to make such alteration therein as it may think fit.

Unauthorised buildings over drains, etc.

82. The Committee may, by notice, require any person, who without its permission in writing may newly erect or rebuild any building over any sewer, drain, culvert, water-course or water-pipe vested in the Committee, to pull down or otherwise deal with the same as it may think fit.

Making or altering drains without authority and and discharging sewerage.

83. No person shall, without the permission of the Committee, make or alter or cause to be made or altered any drain leading into any of the sewers or drains, vested in the Committee, nor shall he allow any refuse or offensive matter to flow or drain or be put upon any street or place or into any sewer or drain not set apart for this purpose.

Power to require removal of nuisance arising from tanks and the like.

84. The Committee may, by notice, require the owner or occupier of any land or building to cleanse, repair, cover, fill up or drain off any private well, tank, reservoir, pool, depression or excavation therein which may appear to the Committee to be injurious to health or offensive to the neighbourhood:

Provided that if for the purpose of effecting any drainage under this section it should be necessary to acquire any land not belonging to the same owner or to pay compensation to any person, the Committee shall provide such land or pay such compensation.

Laying and connecting pipes, sewers and the like.

Power of Committee to lay or carry wire, pipes, drains or sewers, through private land subject to payment of compensation for damages sustained, provided that no nuisance is created.

85. The Committee may carry any cable, wire, pipe, drain, sewer or channel of any kind, for the purpose of establishing telephonic or other similar communication or of carrying out and establishing or maintaining any system of lighting, drainage or sewerage through, across, under, or over any road, street or place laid out as or intended for a road or street and after giving reasonable notice in writing to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever situate within the limits of the Muni-

cipality, and for the purpose of the introduction, distribution of outfall of water or for the removal or outfall of sewerage without such limits and may, at all times, do all acts and things which may be necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, sewer or channel, as the case may be, in any effective state for the purpose for which the same may be used or intended to be used:

Provided that no nuisance more than is necessarily caused by the proper execution of the work, is created by any such operation and the interference is considered indispensable, and

Provided further that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him and directly occasioned by the carrying out of any such operations.

86. No person shall, without the permission of the Committee, at any time make or cause to be made, any connection or communication with any cable, wire, pipe, sewer or channel constructed or maintained by or vested in the Committee, for any purpose whatsoever.

Connection with main not to be made without permission of Committee

87. The Committee may, at any time, establish any connection or communication from any water main, drain, or sewer to any premises, or may, by notice, require the owner of such premises to establish any such connection of communication in such manner and within such time as the Committee, by notice in that behalf, may prescribe, at the cost of such owner or occupier.

Connection may be made or required by the Committee in the case of sewerage.

88. (1) The Committee may, by notice, require the owner of any building or land in any street to put up and keep in good condition proper troughs and pipes for receiving and carrying the water from the building or land and for discharging the same so as not to inconvenience persons passing along the street.

Troughs and pipes for rain water.

(2) For the purpose of efficiently draining any building or land the Committee may, by notice, in writing,

(a) require any courtyard, alley or passage between two or more buildings to be paved with such materials and in such manner as may be approved by them, and,

(b) require such paving to be kept in proper repair.

Public Health.

89. If the Committee is of opinion that the cleaning or disinfecting of a building or boat or tent, or any part thereof, or of any article therein, which is likely to retain infection, will

Disinfection of buildings and articles.

tend to prevent or check the spread of any disease, it may, by notice, require the owner or occupier to cleanse or disinfect the same in the manner and within the time prescribed in such notice.

90. No person shall—

Prohibition agninst letting infected houses; doing of acts by diseased persons; keeping of injurious animals and feeding of animals on deleterious substances.

(1) knowingly let a building, boat or tent, or any other part of it in which any person has been suffering from an infectious disease without having it and such of its contents as are liable to retain infection disinfected to the satisfaction of the Committee, or of any officer authorised by it in this behalf, or

(2) while suffering from any infectious, contagious or loathsome disease make or sell or touch when exposed for sale by others any article of food or drink or any medicine or drug for human consumption, or take any part in washing or carrying soiled clothes, or

(3) keep any animal so as to be injurious to the health of persons or animals or so as to become a nuisance, or

(4) feed or allow to be fed any animal, kept for dairy purposes or which may be used for food, on deleterious substance or refuse or filth of any kind.

Information about infectious diseases.

90-A. Every person—

(a) being a medical practitioner or a person openly and constantly practising the medical profession and in the course of such practice become cognizant of the existance of Cholera, Plague, Small-pox, Typhus fever, Measles, Diphtheria, Tuberculosis diseases, Cerebrospinal fever or other dangerous infectious disease which may be notified by the Government in any dwelling other than a public Hospital; or in default of any such medical practitioner or person practising the medical profession,

(b) being the owner or occupier of such dwelling and being cognizant of the existence of any such disease therein; or in default of such owner or occupier,

(c) being the person incharge of, or in attendance on, any person suffering from any such disease in such dwelling and being cognizant of the existence of the disease therein,

Shall give correct information to such officer as the Committee may direct respecting the existence of such disease.

91. Should the Committee, on the report of the Chief Medical Officer, or Health Officer, consider that the water in any well, tank or other place is likely, if used for drinking, to engender or cause the spread of any dangerous disease, it

Prohibition by Committee of use of unwholesome water,

may—

(a) by public notice, prohibit the removal or use of such water for drinking;

(b) by notice, require the owner or person having control of such well, tank or place to take such steps as may be specified in the notice to prevent the public from having access to or using such water; or

(c) take such steps as it may, on the advice of the Chief Medical Officer or Health Officer, consider expedient to prevent the danger or spread of any such disease.

92. (1) No person shall sell to the prejudice of any purchaser, any article of food or drink which is not of the nature, substance or quality of the article demanded by such purchaser.

Penalty for selling food or drink not of the nature, substance or quality of the article demanded by the purchaser.

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say—

(a) where any matter or ingredient not injurious to health has been added to food or drink in order to the production or preparation of the same as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure or conceal the inferior quality thereof;

(b) where food or drink is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(2) In any prosecution under this section, it sha'l be no defence to allege that the vendor was ignorant of the nature, substance or quality of the article sold by him, or that the the purchaser, having bought such articles only for analysis, was not prejudiced by the sale.

93. (1) The Committee may, with the sanction of the Government, by notice in writing, prohibit in any specified part of the Municipality[1][* *] the residence of a public prostitute.

Power over disorderly houses and prostitutes.

(2) Whoever fails to comply with a notice issued under sub-section (1) shall be punishable with imprisonment for a term which may extend to eight days or with fine which may extend to 50 rupees and, in the case of a continuing failure, with an additional fine not exceeding five rupees for every day after the first in regard to which he is convicted of having persisted in the failure.

[1]In section 93 (1) words "(a) the keeping of a brothal" and "(b)" deleted *vide* Regulation XI of 1991, published in Government Gazette dated 21st Maghar 1991.

[1]**94.** Repealed.

Scavenging and House Scavenging.

95. The Committee may fix places within or, with the approval of the Governor, beyond the limits of the Municipality for the deposit of refuse, rubbish or offensive matter of any kind or for the disposal of the dead bodies of animals and may, by public notice, give directions as to the time, manner, and conditions at, in and under which such refuse, rubbish or offensive matter or dead bodies of animals may be removed and deposited at such places.

Removal and deposit of offensive matter.

96. No person being the owner or occupier of any building or land shall keep or knowingly or negligently allow to be kept for more than 24 hours, or otherwise than in some proper receptacle or pit, noxious or offensive matter nor shall any such receptacle or pit be in a filthy or noxious state.

Failure to remove offensive matter.

97. No person shall, without the permission of the Committee or in disregard of its orders, throw or deposit or permit others under his control to throw or deposit earth or materials of any description, or refuse, rubbish or offensive matter of any kind, upon any street or into any public sewer or drain or any drain communicating therewith, nor shall he permit any person under his control to whom the provisions of [2]sections 68, 69 and 70 of the Ranbir Dand Bidhi are applicable, to commit a nuisance into any such place or upon any street.

Depositing, throwing earth or materials or refuse, rubbish or offensive matter, or nuisance on roads or into drains.

98. (a) Subject to the provisions hereinafter contained, the Committee may, at any time, undertake the house scavenging of any house or building on the application or with the consent of the occupier.

Undertaking by Committee of scavenging generally.

(b) The Committee may, by public notice, undertake the house scavenging of any house or building in the Municipality from any date not less than two months after issue of the notice.

(c) The occupier of any house or building affected by the notice may at any time after the issue thereof, apply to the Committee to exclude that house or building from the notice.

(d) The Committee shall consider or pass orders upon every such application within six weeks of the receipt thereof, and may by any such order, exclude such house or building from the notice.

[1]Section 94 repealed *vide* Act XI of 1991 published in Government Gazette dated 21st Maghar 1991.

[2]Sections 82,83 and 84 Ranbir Penal Code.

(e) In deciding whether to exclude any house or building from the notice, the Committee shall consider, among other matter, the efficiency of the arrangements for house scavenging made by the occupier (if any) and the purpose to which he applies the matter dealt with in house scavenging.

Slaughter Houses.

Places for slaughter of animals for sale

99. (1) The Committee may, with the approval of the Governor of the Province, fix premises either within or without the limits of the Municipality for the slaughter of animals for sale of any specified description of such animals, and may grant and withdraw licences for the use of such premises, or, if they belong to the Committee, charge rent or fees for the use of the same.

(2) When such premises have been fixed by the Committee beyond Municipal limits, it shall have the same power to make bye-laws for the inspection and proper regulation of the same as if they were within those limits.

(3) When such premises have been fixed by the Committee, no person shall slaughter any such animal for sale within the Municipality at any other place.

Disposal of dead animals.

100. (1) Whenever any animal in the charge of any person dies otherwise than by slaughter either for sale or for some religious purpose, the person in charge thereof shall, within 24 hours, either:—

(a) convey the carcass to a place (if any) fixed by the Committee under section 95 for the disposal of the dead bodies of animals, or to any place at least one mile beyond the limits of the Municipality; or

(b) give notice of the death to the Committee, whereupon the Committee shall cause the carcass to be disposed of.

(2) In respect of the disposal of the dead body of an animal under clause (b) of sub-section (1), the Committee may charge such fee as it may, by public notice, have prescribed.

(3) For the purpose of this section the word "animal" shall be deemed to mean all horned cattle, elephants, camels, horses, ponies, asses, mules, deer, sheep, goats, swine and other large animals.

Streets and Buildings.

Power over streets.

101. The Committee may:—

(a) close temporarily any public street or any part thereof for any public purpose;

(b) divert, discontinue or close permanently any public street.

Power of permitting temporary occupation of streets etc.

102. The Committee may grant permission in writing for the temporary occupation of any street or land, vested in it, for the purpose o depositing any building materials or making any temporary excavation therein or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of person passing by or dwelling or working in the neighbourhood, and may charge fees for such permission and may, at its discretion, withdraw the permission.

102-A. The Committee may, by notice, require the owner of any building, wall or structure or anything affixed thereto or any bank or tree which has fallen in such a way as to obstruct or encroach upon any street, sewer, drain or watercourse to remove the same.

Power to require repairs of streets and to declare such streets as public.

103. (1) When the Municipal Committee considers that in any street, not being a public street which has previously been levelled, paved, metalled, channelled, sewered or repaired out of Municipal or other public Funds, or in any part of such street, within the Municipality, it is necessary, for the public health, convenience or safety, that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting, or cleaning thereof, the Municipal Committee may, by written notice, require the respective owners of the lands or buildings fronting, adjoining or abutting upon such street or part thereof to carry out such work in a manner and within a time to be specified in such notice.

(2) If such notice is not complied with during the time specified, the Committee may, if it thinks fit, execute the work mentioned or referred to therein, and may recover, under the provisions of section 56, the expenses incurred in doing so from the owners in default according to the frontage of their respective lands or buildings and in such proportion as may be decided by the Committee.

(3) After such work has been carried out by such owners, or, as provided in clause (2), by the Municipal Committee at the expense of such owners, the street or part thereof in which such work has been done, may, and , on the joint requisition of a majority of the said owners, shall, be declared, by a public notice put up therein by the Municipal Committee, to be a public street, and shall vest in the Committee.

(4) A Municipal Committee may, at any time, by notice fixed up in any street or part of a street not maintainable by the Municipal Committee, give intimation of their intention to

declare the same a public street, and, unless, within one month next after such notice has been so put up, owner or the majority of several owners of such street or such part of a street lodges or lodge objections thereto at the Municipal office, the Municipal Committee may, by notice in writing, put up in such street, or such part declare the same to be a public street vested in the Committee.

(5) This section shall not take effect in any Municipality until it has been specially extended thereto by the Government at the request of the Committee.

104. (1) No person shall, without the written permission of the Committee.

Removal of projections and obstructions.

(a) place in front of any building or build or erect any immoveable or moveable encroachment upon the ground level of any street or over or on any sewer, drain or water-course or any moveable overhanging structure projecting into a street at a point above the said ground level;

(b) take up or alter the pavement or other materials or the fences or posts of any street;

(c) deposit building materials, goods for sale, or other articles of merchandise on any street; or

(d) make any hole or excavation on, in or under, any street, or remove materials from beneath any street, so as to cause risk of subsidence.

(2) The Committee may, in addition to punishing the offender without paying any compensation:—

(i) summarily remove, or cause to be removed by the Police, any such moveable encroachments or overhanging structures and any such materials, goods or articles of merchandise.

(ii) take order summarily to restore the street to the condition it was in before any such alteration, excavation or damage, and the expense of such restoration shall be recoverable from the offender.

Explanation.—For the purposes of this section "moveable encroachment" includes a seat or settle, and "moveable overhanging structure" includes an awning of any material.

105. (1) Should any building or part of a building project beyond the regular line of a street, either existing or determined on for the future, or beyond the front of the building or either side thereof, the Committee may, whenever such building or part has been either entirely or in greater part taken down or burnt down, or has fallen down, by notice, require such building or part when being rebuilt to be set back to or towards the said regular line or the front of the adjoining

Power to regulate line of buildings.

buildings; and the portion of the land added to the street by such setting back or removal shall become part of the street and shall vest in the Committee.

Provided that the Committee shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back.

(2) The Committee may, on such terms as it may think fit, allow any building to be set forward for the improvement of the line of the street.

Removal of projections and obstructions on payment of compensation.

106. In cases to which the provisions of section 104 do not apply, the Committee may, subject to the payment of reasonable compensation, by notice, require the owner or occupier of any building to remove or alter any balcony, projection, structure, or verandah overhanging, projecting into or encroaching on any street or into or on any drain, sewer or aqueduct therein.

Power to attach brackets for lamps.

107. The Committee may attach to the outside of any building brackets for lamps in such manner as not to occasion any injury thereto, or inconvenience.

Destroying direction posts, lamp post etc.

108. No person, who is not authorised or permitted to do so by the Committee, shall—

(1) deface, change, destroy or disturb any municipal direction post, or lamp or any name or number affixed to any street, building or place, or

(2) picket animals or collect vehicles on any street or use any street as a place for halting or encampment for any vehicles or cause or permit animals to stray, or

(3) drive vehicles after dark when there is not sufficient moonlight, without proper lights, or

(4) discharge fireworks or fire-arms of any kind or engage in any game or carry on any operations in such manner as to cause, or likely to cause, danger to life or property or both.

Inflammable materials.

109. The Committee may, where it appears to it to be necessary, for the prevention of danger to life or property, by public notice, prohibit all persons from stacking or collecting timber, wood, dry grass, straw, or other inflammable materials, or placing mats or thatched huts or lighting fires in any place or within any limits specified in the notice.

Roofs and external walls not to be made of inflammable materials.

110. The Committee may direct that, within certain limits to be fixed by it, the roofs and external walls of huts or other buildings shall not be made or renewed of grass, mats,

leaves or other highly inflammable materials without the permission of the Committee in writing, and the Committee may, by written notice, require any person, who has disobeyed any such direction, to remove or alter the roofs of walls so made or renewed as it may think fit.

CHAPTER IX.

BYE-LAWS.

General Bye-Laws.

111. All the existing Municipal Bye-laws duly sanctioned by the Government relating to any of the following and other matters shall remain in force unless they have been superseded or modified by any of the provisions of this Act or any rule or bye-laws issued thereunder.

Making of other bye-laws.

112. Any Committee may, by bye-law—

(a) render licences necessary for the proprietors or drivers of vehicles, boats or animals kept or plying for hire within the limits of the Municipality, and fix the fees payable for such licences and the conditions on which they are to be granted and may be revoked;

(b) limit the rates which may be demanded for the hire of any carriage, cart, or other conveyance, or of animals hired to carry loads or persons, or for the services of persons hired to carry loads or to impel or carry such conveyances, and the loads to be carried by such conveyance, animals or persons when hired within the Municipality for a period not exceeding 24 hours or for a service which would ordinarily be performed within 24 hours;

(c) provide for the proper registration of births, marriages and deaths, and for the taking of a census;

(d) fix, and from time to time vary, the number of persons who may occupy a building or part of a building, which is let in lodgings or occupied by members of more than one family, or which is situated within such congested bazar areas as may be specified in the bye-law; and provide—

(i) for the registration and inspection of such buildings;

(ii) for promoting cleanliness and ventilation in such buildings;

(iii) for the notices to be given and the precautions to be taken in the case of any infectious or contagious diseases breaking out in such buildings;

(iv) for fixing, regulating and prohibiting the use of places at which boats may be moored, loaded and unloaded;

(v) in the case of hotel, *serai* and lodging-house keepers and the secretaries of residential clubs for the maintenance of registers in such forms as the Committee may prescribe, of visitors and lodgers; and

(vi) generally for the proper regulation of such buildings;

(e) provide:—

(i) for the inspection and proper regulation of encamping grounds, pounds, *serais*, bakeries, ærated water factories, dairies, ice factories, *dhobi's ghats*, flour mills and slaughter houses;

(ii) for the inspection and proper regulation of markets for the preparation and exhibition of a price current and for fixing the fees, rents and other charges, to be levied in such markets;

(iii) for defining the standard weights and measures to be used in the Municipality and for the inspection of weights and measures under section 125;

(iv) for the holding of fairs and industrial exhibitions within the Municipality or under the control of the Committee, and for the collection of fees;

(v) for controlling and regulating the use and management of burial and burning grounds;

(vi) for the supervision, regulation and protection from pollution of public wells, tanks, springs, or other sources from which water is or may be made available for the use of the public, whether within or without the Municipality;

(f) require and regulate the appointment by owners of building or land in the Municipality, who are not resident in the Municipality, of persons residing within or near the Municipality to act as their agents for all or any of the purposes of this Act or any rule thereunder;

(g) render licences necessary for using premises as stables, cow houses, or houses or enclosures for sheep or goats;

(h) in any Municipality where a reasonble number of slaughter-houses has been provided or licensed by the Committee, control, regulate, or prohibit the admission within the Municipal limits for the purpose of sale of the flesh (other than cured or preserved meat) of any sheep or goat slaughtered at any slaughter-house or place not maintained or licensed under this Act, and may provide for the seizure, destruction or disposal otherwise of any flesh brought within Municipal limits in contravention of any such bye-law;

(i) fix premises within the Municipality in which the slaughter of animals of any particular kind, not for sale, shall

be permitted, and prohibit, except in case of necessity, such slaughter elsewhere within the Municipality: Provided that no such bye-law shall apply to animals slaughtered for any religious purpose;

(j) prohibit the letting off of fire-arms, fireworks, fire-balloons, bombs or detonators except:—

(1) with the permission of the Committee or of a Municipal officer empowered to give such permission,

(2) subject to such conditions as the Committee may impose, and

(3) on payment of such fees (if any) as may at any time have been fixed by the Committee in that behalf;

(k) regulate the making and use of connections or communications between private houses and premises and mains or service cables, wires, pipes, drains, sewers and other channels established or maintained by the Committee, under any of the provisions of this Act,

(l) regulate the posting of bills and advertisements, and the position, size, shape, and style of name-boards, sign-boards and sign-posts;

(m) provide for, regulate, require or prohibit the construction, pattern of construction, maintenance and materials of boundary walls, hedges, and fences hereafter erected or re-erected so as to abut on a public street or upon property vested in the Committee;

(n) regulate, license or prohibit any description of traffic in the street;

(o) prohibit the storage of more than a fixed maximum quantity of any explosive, petroleum, spirit, naptha or other inflammable material in any building not registered or licensed under section 79;

(p) provide for the seizure and confiscation of owner-less animals straying within the limits of the Municipality;

(q) prescribe stamp duties for applications, agreements, contracts and bonds etc.;

(r) generally provide for carrying out the purposes of this Act.

113. (1) No person shall erect or re-erect or commence to erect or re-erect any building without the sanction of the Committee.

Prohibition of building without sanction.

(2) Every person, who intends to erect or re-erect any building, shall give notice in writing to the Committee of such intention.

(3) A Committee may, by bye-law:—

(a) prescribe the manner in which notice of the intention to erect or re-erect a building shall be given to the Committee;

(b) require that with every such notice shall be furnished a site plan of the land on which it is intended to erect or re-erect such building and a plan and specification of the building of all such character and with such details as the bye-law may require.

Power of Committee to make bye-laws as to mode of construction of buildings.

114. The Committee may, by bye-laws, regulate in respect of the erection or re-erection of any building within the Municipality or part thereof—

(a) the materials and method of construction to be used for external and party walls, roofs, floors, fire-places, and chimneys;

(b) the materials and method of construction and position of fire-places, chimneys, drains, latrine privies, urinals, and cesspools;

(c) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;

(d) the ventilation and the space to be left about the building to secure the free circulation of air and for the prevention of fire;

(e) the line of frontage where the building abuts on a street;

(f) the number and height of the storeys of which the building may consist; and

(g) the means to be provided for egress from the building in the case of fire.

Power of Committee to sanction or refuse.

115. Within two months after the receipt of the notice, if any, required by sub-section (2) of section 113, the Committee may refuse to sanction the building or may sanction it either absolutely or subject to such modification as it may deem fit in respect of all or any of the matters specified in subsection 3 of that section, and the person erecting or re-erecting any such building as aforesaid shall comply with the sanction of the Committee as granted in every particular.

Provided that should the Committee neglect or omit for two months after the receipt of a valid notice to make and deliver to the person who has given such notice an order of sanction or refusal in respect thereof, it shall be deemed to have sanctioned the proposed building absolutely. [1][The limit of period, fixed in this section, shall not apply to such applications for construction of buildings as require the final sanction of the Government under special rules and bye-laws.]

[1] In section 115 words in brackets added *vide* Chief Minister's letter No 7827, dated 24th February 1916.

116. Every sanction for the erection or re-erection of any building which shall be given, or be deemed to have been given, by a Committee, shall remain in force for one year only from the date of such sanction. Should the erection or re-erection of the building not have been commenced within the period of one year, the sanction shall be deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of the Act.

Lapse of sanction.

117. The Committee shall make full compensation to the owner for any damage which he may sustain in consequence of the prohibition of the re-erection of any building:

Compensation for damage.

Provided that the Committee shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building, which, for a period of three years or more immediately preceding such prohibition, has ceased to be fit for occupation or to exist or having been demolished or destroyed has not been re-erected.

118. The Committee may, by bye-law—

Powers of Committee to regulate the manufacture, preparation and sale of food and drink.

(a) prohibit the manufacture or preparation for sale of any specified articles of food or drink in any premises not licensed by the Committee;

(b) regulate the grant and withdrawal of licences to premises for the manufacture or preparation for sale of such specified articles of food or drink;

(c) regulate the hours and manner of transport within the Municipality of any specified articles of food or drink;

(d) fix the places in which any specified article of food or drink may be sold or exposed for sale or the places in which it may not be sold or exposed for sale;

(e) prohibit the sale of milk, cheese and butter by persons not licensed by the Committee;

(f) prohibit the import into the Municipality for sale of milk, cheese and butter by persons not licensed by the Committee;

(g) fix the conditions on which the licences under this section are to be granted and may be revoked:

Provided that no person shall be punishable for breach of any bye-law made under clause (a) or clause (d) of this section by reason of the continuance of such manufacture, preparation or exposure for sale or sale upon any premises which are, at the time of the making of such bye-law, used for such purpose until he has received from the Committee six months'

notice in writing to discontinue such manufacutre, preparation or exposure for such sale, or such sale in such premises.

Confirmation of bye-laws.

119. (1) No bye-law, made under this Act, shall come into force until it has been confirmed by the Government and published in such manner as the Government may prescribe in this behalf.

(2) The Government may cancel its confirmation of any such bye-law, and thereupon the bye-law shall cease to have effect.

Bye-laws to be available for purchase and inspection.

120. (1) A copy of all bye-laws shall be kept at the Committee's office, and shall be open during office hours, without charge, to the inspection of any inhabitant.

(2) Copies of all such bye-laws shall be kept at the Committee's office for sale to the public.

CHAPTER X.

OF PROCEDURE.

Powers of entry and inspection.

Inspection of drains, privies and cesspools.

121. (1) The Committee may authorise any person to enter, between sunrise and sunset into any building or upon any land and to inspect any drain, privy, latrine, urinal, cesspool, cable, wire, pipes, sewer or channel therein, or thereon, and to cause the ground to be opened where such person as aforesaid may think fit for the purpose of preventing or removing any nuisance arising from the drains, privies, latrines, urinals, cesspools, cables, wires, pipes, sewers or channels.

(2) If, on such inspection, it appears that the opening of the ground was necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupie of the land or building; but if it be found that no nuisence exist or but for such opening would have arisen, the ground or portion of any building, drain or other work, if any, opened, injured or removed for the purpose of such inspection, shall be filled in, made good and reinstated by the Committee.

(3) No building other then a latrine, urinal or privy, shall be entered under this section until six hour's notice in writing

has been given to the occupier of the building by the Committee or by the person authorised by the Committee to make the entry.

Inspection of buildings etc.

122. (1) The Committee may authorise any person after giving three hours, notice to the occupier, or, if there be no occupier, to the owner of any tent, building or boat to enter and inspect at any time between sunrise and sunset where such inspection appears necessary for sanitary reasons.

(2) If the building to be inspected is a stable for horses or a house shed for cows and other cattle, previous notice shall not be requisite before inspection.

Other powers of entry on buildings or land.

123. The Committee may authorise any person, after giving twenty-four hours, notice to the occupier, or, if there be no occupier, to the owner of any building or land or boat, at any time between sunrise and sunset:—

(a) to enter on and to survey, and to take levels or measurements of any building or land or boat;

(b) to enter into any building or on any land or boat for the purpose for examining works under construction, of ascertaining the course of sewers or drains, or of executing or repairing any work which it is by this Act empowered to execute or to maintain;

(c) to enter into any building or any land or tent or boat for the purpose of inspecting or repairing water, electric or other installations and for taking readings of meters connected therewith.

Power to inspect places for sale of food or drink, etc. and to seize unwholesome articles exposed for sale.

124. The Committee may authorise any person at all reasonable times to enter into and to inspect any market, building, shop, stall or place used for the sale of food or drink for man, or as a slaughter-house, or for the sale of drugs, and to inspect and examine any food or drink, animal or drug, which may be therein; and, if any article of food or drink, or any animal therein appears to be intended for the consumption of man and to be unfit therefor, may seize and remove the same or may cause it to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for such consumption; and, in case it is reasonably suspected that any drug is adulterated in such manner as to lessen its efficacy or to change its operation or to render it noxious, to remove the same, giving a receipt therefor, and to cause the owner thereof to be brought before a Magistrate for enquiry whether any offence has been committed in respect thereof and for orders as to the disposal of the said drug.

Inspection of weights and measures and seizure of false weights etc.

125. (1) The Committee, by any person authorised by it in this behalf, may at all reasonable times enter into and inspect any market, building, shop, stall or place used for the sale of any goods, food, drink or drug, and may inspect any instruments of weighing, weights and measures, found therein, and test the same with other weights and measures, and may seize any such instrument for weighing, weight or measure which the person so authorised reasonably believes to be false or not in accordance with bye-laws made by the Committee under section 112(e) (iii) and may take the same to be examined or tested by the officer appointed for the purpose.

(2) Every person for the time being in charge of or employed in such market, building, shop, stall or place shall, if so requested by the person making such inspection, produce for such inspection and comparison all instruments for weighing, weights and measures kept therein.

Inspection of places for illicit slaughter of animals

126. If there are reasonable grounds for believing that any animal has been, is being or is about to be, slaughtered in any place or premises not fixed for such purpose under section 99 or in contravention of bye-law made under section 112 (e) (i), the Committee, by any person authorised by it in this behalf, may, at all reasonable times, enter into and inspect any such place or premises.

Provided that no entry shall be made under the provisions of this section without an order in writing from the President or from the Health Officer. Such order shall specify the place or premises to be entered and the locality in which the same is situated and the period (which shall not exceed seven days) for which it is to remain in force.

Search for Inflammable or explosive material in excess of authorised quantity.

127. (1) The Committee may authorise any person to enter upon at any reasonable time and inspect any house or building which is suspected to contain petroleum, explosive or other inflammable material, in excess of the quantity permitted to be kept in such house or building, under the provisions of this Act or of any rule, bye-law or public notice made or published thereunder.

(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a Magistrate may pass with respect to it.

(3) If the Magistrate decides that the material seized was stored in the house or building contrary to the provisions of this Act or of any rule, bye-law or public notice made or published thereunder, he shall pass an order confiscating the same

(4) Subject to any general rules for the time being applicable thereto, the material confiscated may be sold by order of the Magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the Municipal Fund.

(5) No order of the confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity may be liable.

General explanation.

128. The Committee may authorise persons to exercise the powers of entry conferred by this Act either generally in regard to all buildings, boats, tents and lands or particularly in regard to specified buildings, boats, tents and lands.

Precaution to be observed in entering dwellings.

129. When any building or boat used as a human dwelling is entered under this Act due regard shall be paid to the social and religious sentiments of the occupiers and before any apartment in the actual occupancy of any woman, who according to custom does not appear in public is entered under this Act, notice shall be given to her that she is at liberty to withdraw and every reasonable facility shall be afforded to her for withdrawing.

Notice and consequences of non-compliance.

Reasonable time for compliance to be fixed.

130. When any notice under this Act requires any act to be done for which no time is fixed by this Act it shall fix a reasonable time for doing the same.

Authentication, service and validity of notice.

131. (1) Every notice issued by the Committee under this Act or under any rule or bye-law shall be in writing, signed by the President, Vice-President, Engineer, Health Officer, Secretary or Assistant Secretary or by the members of any Sub-Committee specially authorised by the Committee in that behalf, and may be served in the manner provided for the service of summons in the Civil Procedure Code so far as may be applicable.

(2) No notice, issued by the Committee under this Act or under any rule or bye-law, shall be invalid for defect of form.

Service when owner and occupier are different persons.

132. Whenever it is provided by this Act that any notice may be given to the owner or occupier of any land or building, and the owner and occupier or different persons, such notice shall be given to the one of them primarily liable to comply with such notice, and, in case of doubt, to both of them:

Provided that in any such case where there is no owner resident within the Municipality, the delivery of such notice to the occupier shall be sufficient.

Publication of public notices.

133. Every public notice, given by a Committee under this Act or any rule or bye-law, shall be published by proclamation or in such other manner as the Government may, by rule, direct.

Powers of Committee in event of non-compliance.

134. Whenever the terms of any notice have not been complied with, the Committee may, after six hours' notice by the officers, cause the act to be done.

Recovery of cost of execution.

135. (1) Where, under this Act, the owner or occupier of property is required by the Committee to execute any work and default has been made in complying with the requirement, and the Committee has executed the work, the Committee may recover the cost of the work from the person in default.

(2) As between themselves and the Committee, both owner and occupier shall be deemed to be in default for the purposes of this section, but that one of them shall be deemed to be primarily in default upon whom, as between landlord and tenants, the duty of doing the required act would properly fall, either in pursuance of the contract of tenancy or bye-law.

(3) When the person primarily in default is the owner, and the Committee has recovered the whole or any part of the cost from the occupier, or he has paid the same upon its demand, he may deduct the sum so recovered or paid, from the rent from time to time becoming due from him to the owner, or otherwise recover it from such owner:

Provided that no occupier shall be required to pay under sub-section (3) any sum greater than the amount for the time being due from him to the owner, either in respect of rent due at the date of such demand as aforesaid or thereafter accruing, unless he has refused on application to him by the Committee truly to disclose the amount of his rent and the name and address of the person to whom it is payable; but the burden of proof that the sum so demanded by the Committee from the occupier exceeds the rent due at the time of the demand, or which has since accrued due, shall lie on the occupier.

(4) All money recoverable by a Committee under this section may be recovered either by suit or on application to a Magistrate having jurisdiction within the Municipality by distress and sale of the movable property of the person from whom the money is recoverable, and if payable by the owner of the property, shall, until it is paid, be a charge on the property.

(5) Nothing in this section shall affect any contracts between an owner and an occupier.

Relief to agents and trustees.

136. (1) When any person, by reason of his receiving the rent of immovable property as agent or trustee, or of his being as agent or trustee the person who would recieve the rent if the property were let to a tenant, would, under this Act, be bound to discharge any obligation imposed by this Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hand funds belonging to the owner sufficient for the purpose.

(2) The burden of proving the fact entitling an agent or trustee to relief under this section shall lie on him.

(3) When an agent or trustee has claimed and established his right to relief under this section, the Committee may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which shall come to his hands on behalf, or for the use, of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Payment of compensation by the Committee.

Payment of compensation.

137. (1) The Committee may make compensation out of the Municipal Fund to any person sustaining any damage by reason of the exercise of any of the power vested in the Committee, its officers and servants, under this Act, and shall make such compensation where the damage was caused by the negligence of the Committee, its officers or servants and the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised:

Provided that if the amount of compensation in any case exceeds Rs. 100, the sanction of the Minister-in-charge, and if it exceeds Rs. 500, the sanction of the Government shall be necessary.

(2) Should any dispute arise touching the amount of any compensation which the Committee is required by this Act to pay for injury to any building or land, it shall be settled in such manner as the parties may agree, or, in default of agreement, in the manner provided by the State Land Acquisition Act, with reference to the acquisition of, and payment of compensation for, land for public purposes, so far as it can be made applicable.

Appeal from orders etc.

Appeal from orders of Committee.

138. Any person aggrieved by any permission, prohibition, notice or order of a Committee or of any officer duly authorised by the Committee, may, within 30 days, appeal to the Minister-in-charge, whose orders on the appeal shall be final.

Prosecution to be suspended in certain cases.

139. When any order is subject to appeal, and an appeal has been instituted against it, all proceedings to enforce such order and all prosecutions for any breach thereof shall be suspended pending the decision of the appeal, and, if such order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

Offences, prosecutions and penalties.

Authority for prosecution.

140. Unless otherwise expressly provided, no court shall take cognisance of any offence punishable under this Act or any rule or any bye-law thereunder, except on the complaint of or upon information received from, the Committee, or some person authorised by the Committee in this behalf.

Explanation.—The Committee may authorise persons to make complaints or give information, without previous reference to the Committee either generally in regard to all offences against this Act and the rules or bye-laws thereunder, or particularly in regard only to specified offences of a specified class. The person authorised may be authorised by office, if he is President, Vice-President or Secretary of the Committee or officer-in-charge of a Police Station; in other cases the authority must be personal. The authority must in all cases be in writing, and may at any time be cancelled by the Committee.

Penalties.

141. (1) Whoever

(i) (a) obstructs or refuses to submit to the lawful authority of any persons acting in pursuance of section 124 to 127 of this Act;

(b) does, or abets the doing of, and act in contravention of the provisions of section 90 (1) of this Act, shall, on conviction before a Magistrate, be punished for each such offence with a fine which may extend to Rs. 200.

(ii) Does, or abets the doing of any other act in contravention of any of the provisions of this Act or any

rules, bye-laws, notices, orders or licences issued thereunder, or obstructs any person lawfully acting in pursuance of this Act shall on conviction before a Magistrate, be punished for each such offence with a fine which may extend to Rs. 50, and should the offence or breach be a continuing one, with a further fine which may extend to Rs. 5 for every subsequent day till it continues.

(2) In addition to such fine the offender may also be required to remedy the mischief so for as may be possible or it may be so remedied by the Committee at his cost.

(3) No compensation, except as otherwise expressly provided for, shall be claimable for any loss or expenditure to which any person may be put in consequence of complying with, or enforcement of, any lawful order of the Committee.

(4) The punishment, provided for above, shall be in addition to any other proceedings which may be taken under this Act.

Powers to compound offences.

142. (1) The Committee, or with the authorisation of the Committee, its President, Vice-President, Health Officer or Secretary or any Sub-Committee thereof, may accept from any person, against whom a reasonble suspicion exists that he has committed an offence against this Act or any rule or bye-law, a sum of money by way of compensation for such offence.

(2) On payment of such sum of money, the suspected person, if in custody, shall be discharged, and no further proceeding shall be taken against him in regard to the offence or alleged offence so compounded for.

(3) Sums, paid by way of compensation under this section, shall be credited to the Municipal Fund.

(4) Authorisation under sub-section (1) to accept compensation for alleged offence may be given by the Committee, either generally in regard to all offences under this Act and the rule and bye-laws or particularly in regard only to specified offences or offences of a specified class, and may at any time be withdrawn by the Committee.

Member not to be deemed interested in prosecution.

143. No Judge or Magistrate shall be deemed to be a party to, or personally interested in, any prosecution for an offence punishable under this Act or any rule or bye-law or under any other law within the meaning of section 556 of the Criminal Procedure Code by reason only that he is a member of the Committee, by the order, or under the authority, of which it has been instituted.

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CHAPTER XI.

CONTROL.

Power to suspend action of Committee.

144. The Minister-in-charge of the Municipalities may, by order in writing, suspend the execution of any resolution or order of a Committee or joint Committee, or prohibit the doing of any act which if about to be done or is being done, in pursuance of or under cover of this Act or in pursuance of any sanction or permission granted by the Committee in the exercise of its power under this Act, if, in his opinion or in the opinion of the Governor of the Province, the resolution, order, or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons.

Power of Government to supersede Committee in case of incompetency, persistent default or abuse of powers.

145. (1) Should a Committee be incompetent to perform, or persistently make default in the performance of, the duties imposed on it by or under this Act or any other Act, or exceed or abuse its powers, the Government may, by notification, in which the reasons for so doing shall be stated, declare the Committee to be superseded.

(2) When a Committee is so superseded, the following consequences shall ensue:—

(a) all members of the Committee shall, from the date of the notification, vacate their seats;

(b) all powers and duties of the Committee may, until the Committee is reconstituted, be exercised and performed by such persons as the Government may appoint in that behalf;

(c) all property vested in the Committee shall, until the Committee is reconstituted, vest in the Gove nment.

(3) The Government may, if it shall think fit, at any time, constitute another Committee in the place of any Committee superseded under this section.

Power of Government to frame forms and make rules.

146. (1) The Government may frame forms for any proceeding of a Committee for which it considers that a form should be provided, and may make rules consistent with this Act:—

(a) with respect to the powers and duties of Committee in Municipalities;

(b) as to the division of Municipalities into wards, or of the inhabitants into classes or both;

(c) as to the number of representatives proper for each ward or class;

(d) as to the qualification of electors and of candidates for election;

(e) as to the registration of electors;

(f) as to the nomination of candidates, the time of election and the mode of recording votes;

(g) generally for regulating all elections under this Act.

(h) fixing the term of office of members of Committees;

(i) prescribing the qualifications requisite in the case of persons appointed by a Committee to offices requiring professional skill;

(j) as to the priority to be given to the several duties of the Committee;

(k) as to the authority on which money may be paid from the Municipal Fund and as to the management and regulation of Provident Fund established under section 28;

(l) as to the formation and working of the Municipal fire brigades;

(m) as to the procedure to be observed for the punishment or dismissal of servants of the Committee, and as to appeals from orders of punishment or dismissal;

(n) as to the conditions on which property may be acquired by the Committee or on which property, vested in the Committee, may be transferred by sale, mortgage, lease, exchange or otherwise;

(o) as to the intermediate office or offices, if any, through which correspondence between Committees or members of Committees and the Government or the officers of the Government shall pass;

(p) as to the preparation of plans and estimates for works to be partly or wholly constructed at the expense of Committees, and as to the person by whom, and the conditions subject to which, such plans and estimates are to be sanctioned;

(q) for the assessment and collection of, and for the compounding for, refunding or limiting refunds or taxes, imposed under this Act, and for preventing evasion of the same; and for fixing the fees payable for notices of demand;

(r) as to the accounts to be kept by Committees, as to the conditions on which such accounts are to be open to inspection by inhabitants paying any tax under this Act, as to the manner in which such accounts are to be audited and published, and as to the power of the auditors in respect of disallowance and surcharge;

(s) as to the preparation of estimates of income and expenditure of Committee, and as to the persons by whom,

and the conditions subject to which, such estimates may be sanctioned;

(t) as to the returns, statements and reports to be submitted by Committees;

(u) as to the language in which business shall be transacted, proceedings recorded and notices issued;

(v) as to the publication of notices;

(w) to regulate the proceedings of persons empowered to accept composition under section 142 for alleged offences; and

(x) generally for the guidance of Committee and public officers in carrying out the purposes of this Act.

(2) Rules under clause (g) of sub-section (1) may, among other matters, provide—

(i) for the investigation of allegations of corrupt practices or intimidation at elections;

(ii) for making void the election of any person proved, to the satisfaction of the Minister-in-charge of Municipalities to have been guilty of corruption or intimidation or to have connived at, or abetted, the exercise of corruption or intimidation on his behalf by any other person;

(iii) for rendering incapable of Municipal office either permanently or for a term of years any person whose election may have been made void as aforesaid for corruption or intimidation or for connivance at, or abetment of, the same;

(iv) for the definition of the practices at Municipal elections which are to be deemed to be corrupt or to amount to intimidation;

(v) for prescribing the authority by which questions relating to the matters referred to in clauses (d), (e) and (f) of sub-section (1) shall be determined;

(vi) for authorising the officer deciding any objection to an election to order the objectors to pay the costs of all proceedings taken up on such objection if the latter be, in the opinion of such officer, frivolous or vexatious; such order shall be final; and

(vii) for authorising courts to take cognisance of the breach of any such rules on the complaint of the Minister-in-charge or some person authorised in writing by the Minister-in-charge.

(3) All rules made under this Act shall be subject to previous publication.

(4) A rule under this section may be general for all Municipalities or for all Municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more Municipalities as the Government direct.

CHAPTER XII.

SMALL TOWNS.

Constitution of notified area.

147. The Government may, by notification, declare that, with respect to some or all of the matters upon which a Municipal Fund may be expended, improved arrangements are required within a specified area, hereinafter called a notified area, which, nevertheless, it is not expedient to constitute a Municipality.

Power of Government to impose taxation and regulate expenditure of proceeds thereof.

148. The Government may—

(1) impose in any notified area any tax which could be imposed there by the Committee if the notified area were a Municipality;

(2) apply or adapt to the notified area, for the assessment and recovery of any tax imposed under clause (1), any provisions of this Act or any rules for the time being in force with respect to the assessment and recovery of any tax imposed under this Act;

(3) arrange for the due expenditure of the proceeds of taxes imposed under clause (1), and for the preparation and maintenance of proper accounts;

(4) appoint a Committee of one or more persons for the purpose of clauses (2) and (3);

(5) extend to any notified area the provisions of any section of this Act subject to such modifications and restrictions, if any, as the Government may think fit.

Application of Act to notified area.

149. For the purposes of any section of this Act which may be extended to a notified area, the Committee appointed for such area, under section 148 shall be deemed to be a Municipal Committee under this Act and the area to be a Municipality.

Discontinuance of notified area.

150. The Government may, at any time, cancel or modify any notification under section 147 or any order under section 148.

Application of funds of areas ceasing to be notified.

151. When, by reason of any order of cancellation under section 150, any notified area ceases to be notified, the unexpended funds shall be applied as the Government may think fit.

THE CRIMINAL LAW AMENDMENT ACT, 1971.

CONTENTS.

Preamble.

SECTION.

1. Short title and extent.

PART I.

SPECIAL PROCEDURE.

2-14. Repealed.

PART II.

UNLAWFUL ASSOCIATION

15. Definition.

16. Power to declare association unlawful.

17. Penalties.

SECTION.

17-A to 17-F } Omitted.

17-G. Woman or child member of unlawful association, service of summons.

17-H. Trial, sentence.

17-I. Fine recoverable from guardian etc.

18. Continuance of association.

Schedule—omitted.

THE CRIMINAL LAW AMENDMENT ACT, 1971.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 4282/N-10-07, dated 10th September 1940*).

[1]An Act to provide for the more speedy trial of certain offences and for the prohibition of associations dangerous to the public peace.

WHEREAS it is expedient to provide for the more speedy trial of certain offences, and for the prohibition of associations dangerous to the public peace; it is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Jammu and Kashmir State Criminal Law Amendment Act, Samvat 1971.

(2) It extends to the whole of Jammu and Kashmir State.

[2]2-14. Repealed.

[1]*Note.*—Offences under this Act were made triable by a Sessions Judge without commitment and assessors not withstanding procedure prescribed in this Act, by Notification No. 13-L/1988. This Notification was, however, amended by Act X of 1995 and procedure precrited in this Act for trial of offencess under the Act is restored (Editor).

[2]Section 2 to 14 repealed by Notification No. 48-L/1989, [published in Government Gazette dated 5th Phagan 1989 (Extraordinary)] on the auspicious birthday of Shri Yuv Raj Ji.

PART II.

UNLAWFUL ASSOCIATIONS.

Definitions.

15. In this Part:—

(1) "Association" means any combination or body of persons, whether the same be known by any distinctive name or not; and

(2) "Unlawful Association" means an association—

(a) which encourages or aids persons to commit acts of violence or intimidation or of which the members habitually commit such acts, or

(b) which has been declared to be unlawful by His Highness the Maharaja Sahib Bahadur [1][or the Government].

Power to declare association unlawful.

16. If His Highness the Maharaja Sahib Bahadur [1][or the Government] is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, His Highness the Maharaja Sahib Bahadur [1][or the Government] may, by notification in the Jammu and Kashmir Government Gazette, declare such association to be unlawful.

Penalties.

17. (1) Whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever manages or assists in the management of an unlawful association, or promotes or assists in promoting a meeting of any such association, or of any members thereof as such members, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

[2]**17** (3) and **17-A** to **17-F.** Omitted.

[3][**17-G.**—Whenever a woman or a child is member of an

[1]In sections 15 (b) and 16 after the words "His Highness the Maharaja Sahib Bahadur" the words "the Government" added *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996 and word "or" inserted *vide* Act II of 1997.

[2]Sections 17 (3) and 17-A, 17-B, 17-C, 17-D, 17-E and 17-F, were inserted by Regulation No. 27 of 1989 and were to remain in force for three years only from 1st Baisakh 1990. These sections are *ipso facto* omitted being spent.

[3]Sections 17-G, 17-H, 17-I, added by Act 12 of 1990 published in Government Gazette dated 7th Chet 1990 (Extraordinary).

Woman or child member of unlawful association service of summons.

unlawful association or takes part in meetings of any such association or contributes or receives or solicits any contribution for the purpose of any such association or in any way assists the operations of any such association a court having jurisdiction may issue a summons to such woman or child to appear in court on a particular date. Such summons shall, if possible, be served on the woman and on the child and one copy shall be affixed at the door of the court issuing the summons and one copy at the door of the house in which the woman or child is supposed to reside on credible information.

Trial; sentence.

17-H.—On the date so fixed the case against the woman or child shall be heard whether the woman or child be present or not and whether service may have been made on the person of the woman or child or not:

Provided that in the absence of the woman or child only a sentence of fiine shall be imposed and no other sentence.

Fine recoverable from guardian etc.

17-I.—The fine imposed on any woman or child shall be recoverable from the husband, father or guardian of such woman or child or from any person in whose house the woman or child may be residing at the time of the commission of the offence as if the fine had been imposed on such husband, father guardian or person.

Explanation.—A child' would include any male up to 18 years of age and a 'woman' would include any female, whatever her age may be.

Continuance of association.

18. An association shall not be deemed to have ceased to exis by reason only of any formal act of dissolution or change of title, but shall be deemed to continue so long as any actua combination for the purposes of such association continues between any members hereof.

THE JAMMU AND KASHMIR STATE EXPLOSIVE SUBSTANCES ACT 1971.

CONTENTS.

Preamble.

SECTION.

1. Short title and extent.
2. Definition of "Explosive Substance".
3. Punishment for causing explosion likely to endanger life or property.
4. Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.
5. Punishment for making or possessing explosives under suspicious circumstances.
6. Punishment for abettors.
7. Restriction on trial of offence

THE JAMMU & KASHMIR STATE EXPLOSIVE SUBSTANCES ACT, 1971.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 4282/N-10-07 dated 10th September 1914.)

An Act relating to explosive substances.

WHEREAS it is necessary to enact an Act relating to explosive substances; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Jammu and Kashmir State Explosive Substances Act, Samvat 1971.

(2) It extends to the whole of the Jammu and Kashmir State.

Definition of "Explosive substance".

2. In this Act the expression "Explosive Substance" shall be deemed to include any materials for making any explosive substance; also any apparatus, machine, implement, or material, used, or intended to be used, or adapted for causing, or aiding in causing, any explosion in or with any explosive substance; also any part of any such apparatus, machine, or implement.

Punishment for causing explosion likely to endanger life or property.

3. Any person who unlawfully and maliciously causes by any explosive substance an explosion of a nature likely to endanger life or to cause serious injury to property shall, whether any injury to person or property has been actually caused or not, be punished with imprisonment for life or any shorter term, to which fine may be added.

Punishment for attempt to cause explosion, or for making or keeping explosive with intent to endanger life or property.

4. Any person who unlawfully and maliciously:—

(a) does any act with intent to cause by an explosive substance, or conspires to cause by an explosive substance, an explosion in the Jammu and Kashmir State of a nature likely to endanger life or to cause serious injury to property; or

(b) makes or has in his possession or under his contro any explosive substance with intent by means thereof to endanger life, or cause serious injury to property in the Jammu and Kashmir State, or to enable any other person by means thereof to endanger life or cause serious injury to property in the Jammu and Kashmir State;

shall, whether any explosion does or does not take place and whether any injury to person or property has been actually

caused or not, be punished with imprisonment for life, or any shorter term, to which fine may be added.

Punishment for making or possessing explosives under suspicious circumstances.

5. Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be punishable with imprisonment for a term which may extend to 14 years, to which fine may be added.

Punishment of abettors.

6. Any person who by the supply of or solicitation for money, the providing of premises, the supply of materials, or in any manner whatsoever, procures, counsels, aids, abets, or is accessory to, the commission of any offence under this Act shall be punished with the punishment provided for the offence.

Restriction on trial of offences.

7. No Court shall proceed to the trial of any person for an offence against this Act except with the consent of [1][the Government].

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[2]THE JUDICIAL OFFICERS' PROTECTION ACT, 1971.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 7045/F-29/10, dated 24th December 1914.)

An Act for the protection of Judicial Officers in the Jammu and Kashmir State.

Preamble.

For the greater protection of Magistrates and others acting judicially, it is enacted as follows:—

1. No Judge, Magistrate, Governor, Wazir-i-Wazarat, or other person acting judicially shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction: Provided that he at the time, in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Governor, Wazir-i-Wazarat or other person acting judicially shall be liable to be sued in any Civil Court, for the execution of any warrant or order, which he would be bound to execute, if within the jurisdiction of the person issuing the same.

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[1]In section 7 "the Government" substituted for "His Highness the Maharaja Sahib Bahadur" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1991.

[2]Published in Government Gazette dated 20th Magh 1971.

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1971.

CONTENTS.

SECTION.

1. Short title and extent.
2. Definitions.
5. Appeal.
6. Bar of other proceedings.
7. Power to annul declaration under the Jammu and Kashmir State Press and Publications Regulation, 1971.

SECTION.

3. Power to forfeit printing presses in certain cases.
4. Power to seize.
8. Penalty.
9. Application of Code of Criminal Procedure.
10. Operation of other laws not barred.

THE NEWSPAPERS (INCITEMENTS TO OFFENCES) ACT, 1971.

(Sanctioned by His Highness the Maharaja Sahib Bahadur, vide Chief Minister's No. 6509/N-102/07, dated 3rd December 1914.)

An Act for the prevention of incitements to murder and to other offences in newspapers.

WHEREAS it is expedient to make better provision for the prevention of incitements to murder and to other offences in newspapers; it is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Jammu and Kashmir State Newspapers (Incitements to offences) Act, Samvat 1971.

(2) It extends to the whole of the Jammu and Kashmir State.

Definitions.

2. (1) **In this Act** unless there is anything repugnant in the subject or context:—

(a) "Magistrate" means a District Magistrate, Sub-Divisional Magistrate, or [1]Chief Judge of the Province:

(b) "Newspaper" means any periodical work containing public news or comments on public news:

(c) "Printing Press" includes all engines, machinery, types, lithographic stones, implements, utensils and other plant or materials used for the purpose of printing.

(2) Save as herein otherwise provided, all words and expressions in this Act shall have the same meanings as those respectively assigned to them in the [2]Code of Criminal Proceddure Samvat 1969.

[1] District and Sessions Judge.
[2] Code of Criminal Procedure (Act XXIII of 1989).

Power to forfeit printing presses in certain cases.

3. (1) In cases, where, upon application made by order of or under authority from [1][the Government], a Magistrate is of opinion that a newspaper printed and published within the Province contains any incitement to murder or to any offence under the Jammu and Kashmir State Explosive Substances Act, Samvat 1971, or to any act of violence, such Magistrate may make a conditional order declaring the Printing Press used, or intended to be used, for the purpose of printing or publishing such newspaper, or found in or upon the premises where such newspaper is, or at the time of the printing of the matter complained of was, printed and all copies of such newspaper, wherever found, to be forfeited to His Highness the Maharaja Sahib Bahadur, and shall in such order state the material facts and call on all persons concerned to appear before him, at a time and place to be fixed by the order, to show cause why the order should not be made absolute.

(2) A copy of such order shall be fixed on some conspicuous part of the premises specified in the declaration made in respect of such newspaper under [2]section 3 of the Jammu and Kashmir State Press and Publications Act, 1971, or on any other premises in which such newspaper is printed and the affixing of such copy shall be deemed to be due service of the said order on all persons concerned.

(3) In cases of emergency or in cases where the purposes of the application might be defeated by delay, the Magistrate may, on or after the making of a conditional order under sub-section (1), make a further order *ex parte* for the attachment of the printing press or other property referred to in the conditional order.

(4) If any person concerned appears and shows cause against the conditional order, the Magistrate shall take evidence, whether in support of or in opposition to such order, in manner provided in [3]section 356 of the Code of Criminal Procedure, Samvat 1969.

(5) If the Magistrate is satisfied that the newspaper contains matter of the nature specified in sub-section (1), he shall make the conditional order of forfeiture absolute in respect of such property as he may find to be within the terms of the said sub-section.

(6) If the Magistrate is not so satisfied, he shall set aside the conditional order of forfeiture and the order of attachment, if any.

[1]In section 3 (1) "the Government" substituted for "His Highness the Maharaja Sahib Bahadur" *vide* Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.

[2]Section 5 of Press and Publications Act 1 of 1989.

[3]Section 356 of Code of Criminal Procedure (Act XXIII of 1989).

Power to seize.

4. (1) The Magistrate may by warrant empower any Police Officer not below the rank of a Deputy Inspector to seize and detain any property ordered to be attached under section 3, sub-section (3), or to seize and carry away any property ordered to be forfeited under section 3, sub-section (5), wherever found and to enter upon and search for such property in any premises—

(a) where the newspaper specified in such warrant is printed or published, or

(b) where any such property may be or may be reasonably suspected to be, or

(c) where any copy of such newspaper is kept for sale, distribution, publication or public exhibition or reasonably suspected to be so kept.

(2) Every warrant issued under sub-section (1) so far as it relates to a search shall be executed in manner provided for the execution of search-warrants by the [1]Code of Criminal Procedure, S. 1969.

Appeal.

5. Any person concerned who has appeared and shown cause against a conditional order of forfeiture may appeal to the High Court within fifteen days from the date when such order is made absolute.

Bar of other proceedings.

6. Save as provided in section 5, no order duly made by a Magistrate under section 3 shall be called in question in any court.

Power to annul declaration under the Jammu and Kashmir State [3]Press and Publications Regulation, 1971.

7. Where an order of forfeiture has been made absolute in relation to any newspaper, [2][the Government] may, by notification in the Jammu and Kashmir Government Gazette, annul any declaration made by the printer or publisher of such newspaper under the Jammu and Kashmir State [3]Press and Publications Act, 1971, and may by such notification prohibit any further declaration being made or subscribed under the said Act in respect of the said newspaper, or of any newspaper which is the same in substance as the said newspaper, until such prohibition be withdrawn.

Penalty.

8. Any person who prints or publishes any newspaper specified in any prohibition notified under section 7 during the continuance of that prohibition shall be liable, on conviction, to the penalties prescribed by section 20 of the Jammu and Kashmir State [3]Press and Publications Act, Samvat 1971.

[1]Code of Orimimal Procedure (Act XXIII of 1989).

[2]In section 7 "the Government" substituted for "His Highness the Maharaja Sahib Bahadur," *vide* Act X of 1996, published in Government Gazette dated 15th Bhadon 1996.

[3]Press and Publications Act 1 of 1989.

9. All proceedings under this Act shall be conducted so far as may be in accordance with the provisions of the [1]Code of Criminal Procedure, Samvat 1969.

Application of Code of Criminal Procedure.

10. No proceedings taken under this Act shall operate to prevent any person from being prosecuted for any act which constitutes an offence under any other law.

Operation of other laws not barred.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1971.

CONTENTS.

Preamble.

SECTION.

1. Short title and extent.
2. Definitions.
3. Notice to be given of public meetings; Power to cause report to be taken.

SECTION.

4. Power to prohibit public meetings.
5. Penalties.
6. Penalty for delivering of speeches in public places.
7. Cognizance of offences.

THE PREVENTION OF SEDITIOUS MEETINGS ACT, 1971.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 4282/N-102-07, dated 10th September 1914*).

An Act relating to the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity.

WHEREAS it is expedient to provide for the prevention of public meetings likely to promote sedition or to cause a disturbance of public tranquillity; it is hereby enacted as follows:—

(1) This Act may be called an Act for the Prevention of Seditious Meetings, Samvat 1971.

Short title and extent.

(2) It extends to the whole of the Jammu and Kashmir State.

[1]Code of Criminal Procedure (Act XXIII of 1989).

2. (1) In this Act, the expression "public meeting" means a meeting which is open to the public or any class or portion of the public.

Definitions.

(2) A meeting may be a public meeting notwithstanding that it is held in a private place and notwithstanding that admission thereto may have been restricted by ticket or otherwise.

(3) "Governor" means the Governors of Jammu and Kashmir and the Wazirs of Leh and Gilgit within their respective jurisdiction.

[1][(4) "A public place or a place of public resort" means a place which is open to the public or to any class or portion of the public.]

3. No public meeting for the furtherance or discussion of any subject likely to cause disturbance or public excitement or for the exhibition or distribution of any writing or printed matter relating to any such subject shall be held—

Notice to be given of public meetings.

(a) unless written notice of the intention to hold such meeting and of the time and place of such meeting has been given to the Governor [2][or Sub-Divisional Magistrate] or the Superintendent of Police at least 3 days previously; and

(b) unless permission to hold such meeting has been obtained in writing from the Governor [2][or Sub-Divisional Magistrate] or the Superintendent of Police.

(2) Any Magistrate of the 1st Class or a Police Officer not below the rank of an Inspector may, by order in writing, depute one or more Police Officers not being below the rank of Sergeants, or other persons to attend any such meeting for the purpose of causing a report to be taken of the proceedings.

Power to cause report to be taken.

4. The Governor or a Sub-Divisional Magistrate or the Superintendent of Police may, at any time, by order in writing, of which public notice shall forthwith be given, prohibit any public meeting if, in his opinion, such meeting is likely to promote sedition or disaffection or to cause a disturbance of the public tranquillity.

Power to prohibit public meetings.

5. (1) Any person concerned in the promotion or conduct of a public meeting held in the Jammu and Kashmir State contrary to the provisions of section 3 shall be punished with imprisonment for a term which may extend to 6 months, or with fine, or with both.

Penalties.

[1]Section 2 (4) added by Regulation 10 of 1988 published in Government Gazette dated 25th Har 1988.

[2]"Or Sub-Divisional Magistrate" added by Chief Minister's letter No. 5575-F-269-09 dated 15th December 1915.

(2) Any public meeting which has been prohibited under section 4 shall be deemed to be an unlawful assembly within the meaning of [1]Chapter VIII of the Ranbir Dand Bidhi and of [2]Chapter IX of the Code of Criminal Procedure, Samvat 1969.

Penalty for delivery of speeches in public places.

6. Whoever, in a public place or a place of public resort otherwise than at a public meeting held in accordance with the provisions of section 3, without the permission of the Governor or the Superintendent of Police, previously obtained, delivers any lecture, address or speech on any subject likely to cause disturbance or public excitement to persons then present, may be arrested without warrant and shall be punished with imprisonment for a term which may extend to 6 months, or with fine, or with both.

Cognizance of offences

7. No Court inferior to that of a Magistrate of the 1st Class shall try any offence against this Act.

NOTE.—Offences under this Act were made triable by a Sessions Judge without commitment and assessors notwithstanding procedure prescribed in this Act by Notification No. 13-L/1988. This Notification was, however, ammended by Act 10 of 1995 and procedure prescribed in this Act for trial of offences under the Act is restored. (Editor).

THE JAMMU AND KASHMIR STATE TELEGRAPH ACT, 1974.

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THE JAMMU AND KASHMIR STATE TELEGRAPH ACT, 1974.

(Sanctioned by order of His Highness the Maharaja Bahadur published in Government Gazette dated 25th Baisakh 1974).

WHEREAS it is expedient to provide for the more effective control and management of the Jammu and Kashmir State Telegraphs and for the acquisition of certain powers; it is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. (1) This Act may be called the Jammu and Kashmir State Telegraph Act, 1974.

(2) It shall come into force on 1st Jeth 1974.

2. In this Act, unless there is something repugnant in the subject or context:—

(1) "Telegraph" means an electric, galvanic or magnetic telegraph and includes appliances and apparatus for transmitting or making telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism.

(2) "Telegraph Officer" means any person employed either permanently or temporarily in connection with a telegraph established, maintained or worked by the State.

(3) "Message" means any communication sent by a telegraph or given to a Telegraph Officer to be sent by telegraph, or to be delivered.

(4) "Telegraph Line" means a wire or wires used for the purpose of telegraph, with any casing, coating tube or pipe enclosing the same, and appliances and apparatus connected therewith for the purpose of fixing or insulating the same.

(5) "Post" means a post, pole, standard, stay, strut or other above ground contrivance for carrying, suspending or supporting a telegraph line.

(6) "Telegraph Authority" means the Minister-in-charge of the Telegraph Department, and includes any officer empowered by him to perform all or any of the functions of the Telegraph authority under this Act.

(7) "Local Authority" means any Municipal Committee or other authority legally entitled to, or entrusted by the Government with the control or management of, any Municipal or local fund.

3. (1) On the occurrence of any public emergency or in the interest of the public safety, [1][the Government] or any officer specially authorised in this behalf by [1][the Government] may order that any message or class of messages to or from any person or class of persons or relating to any particular subject, brought for transmission, by, or transmitted or received by, any State Telegraph shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to [1][the Government] or any officer thereof mentioned in the order.

(2) If any doubt arises as to the existence of a public emergency or whether any act done under sub-section (1) was in the interest of the public safety, a certificate signed by [2][an officer of the Government empowered in this behalf] shall be conclusive proof on the point.

PART II.

POWERS AND PRIVILEGES OF THE GOVERNMENT.

4. (1) [1][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, make rules consistent with this Act, for the conduct of all telegraphs established, maintained or worked by the State.

(2) Rules under this section may provide for all or any of the following among other matters, that is to say:—

(a) the rates at which, and the other conditions and restrictions subject to which, messages shall be transmitted.

(b) the precautions to be taken for preventing the improper interception or disclosure of messages.

(c) the period, for which, and the conditions subject to which telegrams and other documents belonging to, or being in the custody of, Telegraph Officers shall be preserved; and

(d) the fees to be charged for searching for telegrams or other documents in the custody of any Telegraph Officer.

5. [1][The Government] shall not be responsible for any loss or damage which may occur in consequence of any Telegraph Officer failing in his duty with respect to the receipt,

[1]In sections 3, 4, 5, 11, 21 and 27 the words "the Government" substituted for the words "the Durbar" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

NOTE.—See also Notification No. 11-L-1984 published in Government Gazette dated 9th Maghar 1984.

[2]In section 3 (2) for the words "the Minister or the Judge High Court" the words "an officer of the Government empowered in this behalf" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

transmission or delivery of any messages; and no such officer shall be responsible for any such loss or damage unless he causes the same negligently, maliciously or fraudulently.

PART III.

POWER TO PLACE TELEGRAPH LINES AND POSTS.

6. The Telegraph authority, may, from time to time, place and maintain a telegraph line under, over, along or across and posts in or upon any immoveable property:

Provided that:—

(a) the State shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the Telegraph authority places any telegraph line or post; and

(b) except as hereinafter provided, the Telegraph authorithy shall not exercise these powers in respect of any property vested in or under the control or management of any local authority, without the permission of the authority; and

(c) in the exercise of the powers conferred by this section, the Telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (b), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.

7. The Telegraph authority may, at any time for the purpose of examining, repairing, altering or removing any telegraph line or post, enter on the property under, over, along, across, in or upon which the line or post has been placed.

PROVISIONS APPLICABLE TO PROPERTY VESTED IN OR UNDER THE CONTROL OR MANAGEMENT OF LOCAL AUTHORITIES.

8. Any permission given by a local authority under section 6 clause (b), may be given subject to such reasonable conditions as that authority thinks fit to impose, as to the payment of any expenses to which the authority will necessarily be put in consequence of the exercise of the powers conferred by that section or as to the time or mode of execution of any work, or as to any other thing connected with or relative to any work undertaken by the Telegraph authority under those powers.

9. When under the foregoing provisions of this Act a telegraph line or post has been placed by the Telegraph authority under, over, along, across, in or upon any property vested in or under the control or management of a local authority and the local authority having regard to circumstances which have arisen since the telegraph line or post was so placed, considers it expedient that it should be removed or that its position should be altered, the local authority may require the Telegraph authority to remove it or alter its position as the case may be.

10. The Telegraph authority may, for the purpose of exercising the powers conferred upon it by this Act in respect of any property vested in or under the control or managment of a local authority, alter the position thereunder of any pipe (not being a main) for the supply of gas or water, or of any drain(not being a main drain):

Provided that:—

(a) when the Telegraph authority desires to alter the position of any such pipe or drain it shall give reasonable notice of its intention to do so, specifying the time at which it will begin to do so, to the local authority, and, when the pipe or drain is not under the control of the local authority, to the person under whose control the pipe or drain is:

(b) a local authority or person receiving notice under clause (a) may send a person to superintend the work, and the Telegraph authority shall execute the work to the reasonable satisfaction of the person so sent.

11. (1) If any dispute arises between the Telegraph authority and a local authority in consequence of the local authority refusing the permission referred to in section 6 clause (b) or prescribing any condition under section 8 or in consequence of the Telegraph authority omitting to comply with a requistion made under section 9 or otherwise in respect of the exercise of the power conferred by this Act, it shall be determined by such officers as [1][the Government] may appoint either generally or specially in this behalf.

(2) An appeal from the determination of the officer so appointed shall lie to [1][the Government], and the order of [1][the Government] shall be final.

PROVISION APPLICABLE TO OTHER PROPERTY.

12. (1) If the exercise of the powers mentioned in section 6 in respect of property referred to in clause (c) of that section is resisted or obstructed, the District Magistrate, may

[1]See footnote under section 3.

in his discretion, order that the Telegraph authority shall be permitted to exercise them.

(2) If after the making of an order under sub-section (1) any person resists the exercise of those powers, or, having the control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under [1]section 143 of the Ranbir Dand Bidhi.

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 6 clause (e) it shall on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the person entitled to receive compensation or as to the proportions in which the persons interested are entitled to share in it, the Telegraph authority may pay into the court of the District Judge such amount as he deems sufficient, or, where all the disputing parties have in writing admitted the amount tendered to be sufficient, or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-section (3) or sub-section (4) shall be final:

Provided that, nothing in this sub-section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the Telegraph authority, from the person who has received the same.

13. (1) When under the foregoing provisions of this Act, a telegraph line or post has been placed by the Telegraph authority under, over, along, across, in or upon any property not being property vested in or under the control or management of local authority, and any person entitled to do so, desires to deal with the property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the Telegraph authority to remove or alter the line or post accordingly:

Provided that, if compensation has been paid under section 6 clause (c) he shall when making the requisition, tender to the Telegraph authority the amount requisite to defray the expense of the removal or alteration or half of the amount paid as compensation, whichever may be the smaller sum.

[1]Section 188 Ranbir Penal Code.

(2) If the Telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate, to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form, and the order so made shall be final.

PROVISIONS APPLICABLE TO ALL PROPERTY.

14. (1) If any tree standing or lying near a telegraph line interrupts, or is likely to interrupt telegraphic communication, a Magistrate of the 1st or 2nd class may, on the application of the Telegraph authority cause the tree to be removed or dealt with in such other way as he deems fit.

(2) When disposing of an application under sub-section (1), the Magistrate shall, in the case of any tree in existence before the telegraph line was placed, award to the person interested in the tree such compensation as he thinks reasonable and the award shall be final.

(3) In the case of trees of the Forest Department, that Department shall, where there is danger to the line, remove the tree or trees on the requisition of the Telegraph Department and if the tree or trees cannot be otherwise disposed of, the Forest Department will receive credit of its value by book transfer.

15. Every telegraph line or post placed before the passing of this Act under, over, along, across, in or upon any property, for the purposes of a telegraph established or maintained by the State, shall be deemed to have been placed in exercise of the powers conferred by, and after observance of all the requirements of, this Act.

[1]**15-A.** (1) Any person desiring to deal in the legal exercise of a right with any property in such a manner as is likely to cause damage to a telegraph line or post which has been duly placed in accordance with the provisions of this Act, or to interrupt or interefere with the telegraphic communication, shall give not less than one months' notice in writing of the intended exercise of such right to the Telegraph authority, or to any Telegraph officer, whom the Telegraph authority may empower in this behalf.

[1]Section 15-A added by Notification published in Government Gazette dated 11th Katik 1976.

(2) If any such person without having complied with the provisions of sub-section (1) deals with any property in such a manner as is likely to cause damage to any telegraph line or post, or to interrupt or interfere with telegraphic communication, a Magistrate of the first or second class may on the application of the Telegraph authority, order such person to abstain from dealing with such property in such manner for a period not exceeding one month from the date of his order and forthwith to take such action with regard to such property as may be in the opinion of the Magistrate necessary to remedy or prevent such damage, interruption or interference during such period.

(3) A person dealing with any property in the manner referred to in sub-section (1) with the *bona fide* intention of averting imminent danger of personal injury to himself or any other human being shall be deemed to have complied with the the provisions of the said sub-section if he gives such notice of the intended exercise of the right as is in the circumstances possible, or where no such previous notice can be given without incurring the imminent danger referred to above, if he forthwith gives notice of the actual exercise of such right to the authority or officer specified in the said sub-section.

PART IV.

PENALTIES.

16. If any person establishes, maintains or works a telegraph within the State in contravention of this Act, he shall be punished with fine which may extend to one thousand rupees, and with a further fine which may extend to five hundred rupees, for every week dur- ing which the line is maintained or worked.

17. If any person knowingly or having reason to believe that a telegraph has been established or is maintained or worked in contravention of this Act, transmits or receives any message by such telegraph, or performs any service incidental thereof or delivers any message for transmission by such telegraph or delivery of any such message sent thereby, he shall be punished with fine which may extend to fifty rupees.

18. If any person—

(a) without permission of competent authority enters the signal room of a telegraph office of the State, or

(b) enters a fenced enclosure round such a telegraph office in contravention of any rule or notice not to do so, or

(c) refuses to quit such room or enclosure on being requested to do so by any officer or servant em-

ployed therein, or

(d) wilfully obstructs or impedes any such officer or servant in the performance of his duty,

he shall be punished with fine which may extend to five hundred rupees.

19. If any person does any of the acts mentioned in section 18 with the intention of unlawfully learning the contents of any message or of committing any offence punishable under this Act he may (in addition to the fine with which he is punishable under section 17) be punished with imprisonment for a term which may extend to one year.

20. If any person intending—

(a) to prevent or obstruct the transmission of delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches with any battery, machinery, telegraph line, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

[1]**20-A.** If, in any case not provided for by section 20, any person deals with any property and thereby wilfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the Telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communication is by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

Provided that the provisions of this section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of right if he has complied with the provision of section 15-A (1).

21. If any Telegraph officer or any person not being a Telegraph officer but having official duties connected with any office which is used as a telegraph office,

(a) wilfully secrets, makes away with or alters any message which he has received for transmission or delivery, or

(b) wilfully and otherwise than in obedience to an order of [2][the Government], or of an officer es-

[1]Section 20-A added by Notification published in Government Gazette dated 11th Katik, 1976.

[2]See footnote under section 3.

pecially authorised by [1][the Government] to make the order, omits to transmit or intercepts or detains, any message or any part thereof, or otherwise than in pursuance of his official duty or in obedience to the direction of a competent court, discloses the contents or any part of the contents of any message to any person not entitled to receive the same, or

(c) divulges the purport of any telegraphic signal to any person not entitled to become acquainted with the same,

he shall be punished with imprisonment for a term which may extend to three years, or with fine or with both.

22. If any Telegraph officer transmits by telegraph any message on which the charge prescribed by the State, has not been paid, intending thereby to defraud the State, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

23. If any Telegraph officer or any person not being a Telegraph officer but having official duties connected with any office which is used as a telegraph office is guilty of any act of drunkenness, carelessness or other misconduct whereby the correct transmission or the delivery of a message is impeded or delayed, or if any Telegraph officer loiters or delays in the transmission or delivery of any message, he shall be punished with imprisonment for a term which may extend to to three months or with fine which may extend to one hundred rupees or with both.

24. If any person transmits or causes to be transmitted by telegraph a message which he knows to be false or fabricated, he shall be punished with imprisonment for a term which may extend to three years [2][or with fine] or with both.

25. If any person fraudulently retains, or wilfully secrets, makes away with, or detains a message which ought to have been delivered to some other person, or being required by a Telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

A Telegraph officer shall be deemed a public servant within the meaning of [3]sections 125, 126, 128 and 129 of the Ranbir Dand Bidhi.

26. Whoever attempts to commit any offence punishable under this Act, shall be punished with the punishment herein provided for the offence.

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[1]See footnote under section 3.

[2]In section 24 words "or with fine" inserted *vide* Act II of 1997, published in Government Gazette dated 21st Baisakh 1997.

[3]Section 161, 162, 164 and 165 of the Ranbir Penal Code.

PART V.

SUPPLEMENTAL PROVISIONS.

27. (1) Whenever it appears to [1][the Government] that any act causing or likely to cause wrongful damage to any telegraph is repeatedly or maliciously committed in any place, and that the employment of an additional police force in that place is thereby rendered necessary, [1][the Government) may send such additional police force as it thinks fit to the place and employ the same therein so long as, in the opinion of [1][the Government] the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of additional police force, and the District Magistrate shall, subject to the order of [1][the Government], assess the proportion in which the cost shall be paid by the inhabitants according to his judgment of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable under the Warrant of the Governor of the Province or Wazir of Leh as the case may be, by distress and sale of the the moveable property of the defaulter within the local limits of his jurisdiction.

(4) [1][The Government] may, by order in writing, define the limits of any place for the purposes of this section.

NOTIFICATION.

DISSUADING PERSONS FROM MILITARY AND POLICE SERVICE MADE PENAL.

[*Published in Government Gazette dated 2nd Assuj 1974.*]

In order to ensure free enlistment in the Military Service of His Majesty the Emperor of India and the Military and Police Service of His Highness the Maharaja Sahib Bahadur, Jammu and Kashmir State, it is hereby ordered as follows:—

1. No person shall dissuade or attempt to dissuade any person from entering the Military Service of His Majesty the Emperor of India or the Military or Police Service of His Highness the Maharaja Sahib Bahadur of Jammu and Kashmir State:

Provided that this shall not apply to advice true in substance and given in good faith for the benefit of the individual to whom it is given.

[1]See footnote under section 3.

2. Any person who abets or attempts to abet the commission of the act prohibited above shall be deemed to have acted as if he had himself committed the act.

3. Whoever is guilty of any of the acts above prohibited shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

4. No Court shall take cognizance of any offence punishable under these rules without the previous sanction of His Highness the Maharaja Sahib Bahadur of Jammu and Kashmir.

THE PREVENTION OF ADULTERATION OF FOOD ACT, 1975.

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THE PREVENTION OF ADULTERATION OF FOOD ACT, 1975.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No. 198/P-51-13, dated 5th May 1918*).

An Act to make provision for preventing the adulteration of food.

WHEREAS it is expedient to make provision in the Jammu and Kashmir State for Preventing the Adulteration of Food, it is hereby enacted as follows:—

1. (1) This Act may be called the Jammu and Kashmir State Prevention of Adulteration of Food Act.

Short title and extent

(2) It shall come into force at once within the Municipalities of Srinagar and Jammu [1][* * *] and its operation may be extended to such other local areas in the Jammu and Kashmir State as [2][the Government] may by notification in the Jammu and Kashmir Government Gazette direct whether generally in respect of all articles of food or in that of any specified article.

2. In this Act unless there is something repugnant in the subject or context—

Definitions.

"Food" includes every article used for food or drink by man other than drugs or water.

"Public Analyst" means every person appointed by [2][the Government] to perform the duties and to exercise the powers of a public analyst as prescribed by this Act.

"Local area" includes a Municipality, Town Area, and any area in which a fair or market is held.

"Local Authority" in the case of a Municipality means the Municipal Board and in the case of any other local area the District or Sub-Divisional Magistrate.

Power of the Government to appoint public analyst.

3. [1][The Government] may, by notification as aforesaid, appoint any person whom it may think fit to be public analyst in respect of any area prescribed thereby.

Penalty for sale or manufacture of food not of the proper nature, substance or quality.

4. (1) Whoever sells to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser, or sells or offers or exposes for sale or manufactures for sale any article of food which is not of the nature, substance or quality which it purports to be, shall be punished for the first offence with fine which may extend to one hundred rupees and for a second or any subsequent offence with fine which may extend to five hundred rupees:

Provided that no offence shall be deemed to have been committed under this section in the following cases, that is to say:—

(a) Where any matter or ingredient not injurious to health has been added to the food because the same is required for the production or preparation thereof as an article of commerce in a state fit for carriage or consumption, and not frau-

[1]Words "and in the towns of Muzaffarabad, Baramulla, Anantnag and Mirpur" omitted from section 1 (2) *vide* Notification No. 64, dated 25th November 1920, published in Government Gazette dated 22nd Magher 1977.

[2]In sections 1 (2), 2, 3, 7, 8 and 14 for the word "Darbar" the words 'the Government' substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996. NOTE —See also Notification No. 11-L/84 published in the Government Gazette dated 9th Maghar 1984.

dulently to increase the bulk, weight or measure of the food or conceal the inferior quality thereof.

(b) Where in the process of production, preparation or conveyance of such article of food some extraneous substance has unavoidably become intermixed therewith.

(c) Where any matter or ingredient not injurious to health has been added to or mixed with such article of food and before the sale thereof the seller has brought to the notice of the purchaser, either by means of a label distinctly and legibly written or printed on or with the article or otherwise, the fact that such matter or ingredient has been so added or mixed.

(d) Where the article of food is a proprietary food.

(2) In a prosecution under this section the Court may presume that any article of food found in the possession of a person who is in the habit of manufacturing like articles has been manufactured for sale.

Presumption arising on sale of *ghee* containing substance not exclusively derived from milk.

5. If in compliance with a demand for *ghee* or butter any article is supplied which contains any substance not exclusively derived from milk, such article shall be deemed to have been sold to the prejudice of the purchaser within the meaning of section 4.

Bar of certain pleas in defence in prosecutions under section 4.

6. In any prosecution under section 4, it shall be no defence to allege that the vendor was ignorant of the nature, substance or quality of the article sold by him, or that the purchaser having bought only for analysis was not prejudiced by the sale:

Provided that the vendor shall not be deemed to have committed an offence under section 4, if he proves to the satisfaction of the Court:—

(a) that the article sold was purchased by him as the same in the nature, substance and quality as that demanded by the purchaser and with a written warrant to the effect that it was of such nature, substance and quality;

(b) that he had no reason to believe at the time when he sold it that the article was not of such nature, substance and quality as aforesaid, and

(c) that he sold it in the same state in which he purchased it.

Power of purchaser to have article of food analysed.

7. Any purchaser of an article of food shall be entitled on payment of such fees as [1][the Government] may prescribe to have such article analysed by the public analyst appointed

[1]See footnote under section 1.

for the area within which such article is purchased, and to receive from him a certificate of the result of his analysis.

Power to procure samples of food for analysis.

8. Subject to any rules made by the [1][Government] under section 14 of this Act, any person duly authorised either generally or specially in this behalf by a local authority may procure any sample of food and may submit the same to be analysed by the public analyst appointed for the area within which such sample has been procured.

Procedure when sample of food is purchased for analysis.

9. (1) Any person purchasing any article of food with the intention of submitting the same to be analysed by a public analyst shall, after the purchase has been completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed as aforesaid, and shall offer to divide the article into three parts to be then and there separated and each part to be marked and sealed or fastened up in such manner as its nature permits, and shall, if required to do so, proceed accordingly; and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison and submit the 3rd part, if he deems it right to have the article analysed, to the public analyst.

(2) If the seller or his agent do not accept the offer of the purchaser as aforesaid to divide the article purchased in his presence, the public analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it, either upon receipt of the sample or when he supplies his certificate, to be delivered to the purchaser who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Penalty for refusing to sell sample of food for analysis.

10. If any person duly authorised as provided by section 8 or by a rule framed under section 14, as the case may be, applies to purchase any article of food exposed for sale and tenders the price for a quantity not more than is reasonable requisite for the purpose of analysis, and the person exposing the same for sale refuses to sell the same, the person so refusing shall be punished with fine which may extend to fifty rupees.

Duty of public analyst to supply certificate of analysis.

11. (1) Every public analyst to whom any article of food has been submitted for analysis under section 7 or under section 8 or a rule framed under section 14, as the case may be shall deliver to the person so submitting it a certificate, in the form prescribed in the schedule attached

[1] See footnote under section 2.

to this Act, specifying the result of his analysis and shall send a copy of the same to the local authority concerned.

Certificate to be evidence of the facts therein stated.

(2) Any document purporting to be such certificate under the hand of a public analyst may be used as evidence of the facts therein stated in any inquiry, trial or other proceeding under this Act:

Power to call for report from Chemical Examiner.

Provided that any Court before which a case under this Act may be pending, whether exercising original, appellate or revisional jurisdiction, may in its discretion, at the request, either of the accused or the complainant, cause any article of food to be sent for analysis to the Chemical Examiner to the Government, who shall thereupon analyse the same and report the result of such analysis to the said Court. The expense of such analysis shall be paid by the accused or the complainant, as the Court may by order direct.

Cognizance of offences.

12. No prosecution under section 4 or section 10 shall be instituted without the order or consent in writing of the local authority, or, in the case of a Municipal Board, of the person or persons authorised in this behalf by the said Municipal Board.

Jurisdiction.

13. No Magistrate whose powers are less than those of a Magistrate of the second class shall try any offence under this Act.

Power of Government to make rules.

14. [1][The Government] may after previous publication, make rules consistent with this Act:—

(a) providing for the appointment of persons to be called official inspectors, to carry out the provisions of section 8 and of the Act generally.

(b) prescribing the qualifications of such official inspectors and the powers to be exercised by them.

(c) regulating the areas within which such official inspectors shall respectively exercise their powers.

Limitation of prosecution.

15. (1) No summons shall issue for the attendance of any person accused of an offence under section 4 or section 10, unless the same is applied for within 30 days from the date upon which the order or consent referred to in section 12 shall have been made or given.

Particulars to be contained in summons.

(2) Every summons issued in a prosecution under section 4 or section 10 shall specify the particulars of the offence charged and the name

[1]See footnote under section 1.

of the prosecutor; and the day fixed for the hearing of the case shall not be less than seven days from the day on which the summons is served upon such person.

SCHEDULE.

FORM OF CERTIFICATE.

To[1]

I, the undersigned, public analyst for the———————. do hereby certify that I received on the———————day of ———————19 , from[2]———————a sample of———————— for analysis (which then [3]weighed———————)and have analysed the same and declared the result of my analysis to be as follows:—

I am of opinion that the same is a sample of genuine

or

I am of opinion that the said sample contained the parts as under, or the percentages of foregin ingredients as under:—

[4]Observations.

Signed this———————day of———————19 .

A.B. ———————

at———————

THE MOTOR VEHICLES ACT, 1975.

Act No. I of 1975.

CONTENTS.

SECTION.		SECTION.
	PART I	
	Preliminary.	
1.	Short title, extent and commencement.	2. Definitions.

[1]Here insert the name of the person submitting the article for analysis.

[2]Here insert the name of the person delivering the sample. If the sample is received by post or by railway entry should be made accordingly.

[3]When the article cannot be conveniently weighed this passage may be erased or the blank may be left unfilled.

[4]Here the analyst may insert at his discretion his opinion as to whether the mixture (if any) was for the purpose of rendering the article potable, or palatable, or of preserving it, or of improving the appearance, or was unavoidable, and may state whether in excess of what is ordinary or otherwise, and whether the ingredients and materials mixed are or are not injurious to health.

In the case of a certificate regarding milk, butter or any article liable to decomposition the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis.

SECTION.

PART II

PROVISIONS OF GENERAL APPLICATION.

3. Prohibition of driving Motor-vehicles by persons under 18.

4. Duty to stop vehicle for regulating traffic and in case of accident.

5. Reckless driving.

PART III.

LICENCING AND CONTROL.

6. Licensing of drivers.

7. Transfer of licence.

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9. Extent of validity of licence to drive.

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THE MOTOR VEHICLES ACT, 1975.

Act No. I of 1975.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's No. 6968, dated 22nd August, 1919.)

An Act to consolidate and amend the law relating to Motor-vehicles in the State of Jammu and Kashmir.

WHEREAS it is expedient to consolidate and amend the law

relating to Motor-vehicles in the State of Jammu and Kashmir; it is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (1) This Act may be called the Jammu and Kashmir State Motor-vehicles Act, 1975.

(2) It shall come into force at once.

2. "Motor-vehicle" includes a vehicle, carriage or other means of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially.

"Prescribed" means prescribed by rules under this Act.

"Public Place" means a road, street, way or other place, whether a thoroughfare or not to which the public are granted access, or over which they have a right to pass.

[1]["Jhelum Valley Road" for purposes of this Act and rules thereunder means the main road from Anantnag to Srinagar and Srinagar to Kohala and includes the section of the metalled road between Singhapur turning and Tangmarg.]

[2]["Banihal Cart Road" means for purposes of this Act and the rules thereunder the Jammu-Udhampur-Banihal-Khannabal main road.]

[2]["Traffic Officer" includes the Traffic Superintendent, the Traffic Inspectors and such other officers as may be empowered by the Inspector-General of Police to exercise powers conferred on the Traffic Officers under the Act or any rule made thereunder.]

PART II.

PROVISIONS OF GENERAL APPLICATION.

Prohibition of driving Motor-vehicles by persons under 18.

3. (1) No person under the age of 18 years shall drive a Motor-vehicle in any public place.

[1]Inserted by Notification 11-L/83 published in Government Gazette dated 15th Bhadon 1983.

[2]Definitions added by Notification 7-L/89 published in Government Gazette dated 21st Assuj 1989.

(2) No owner or person incharge of a Motor vehicle shall allow any person under the age of 18 years to drive the same in any public place; and, in the event of a contravention of sub-section (1), the Court may presume that the Motor-vehicle was driven with the consent of the owner or person incharge.

Duty to stop vehicle for regulating traffic and in case of accident.

4. The person incharge of a Motor-vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary—

(a) when required to do so by any Police Officer [1][or any Traffic Officer] for the purpose of regulating traffic or of ascertaining his name and address with a veiw to prosecuting such person under this Act or for any purpose connected with the enforcement of the provisions of this Act or the rules thereunder, or

(b) when required to do so by any person, having charge of any animal, if such person apprehends that the animal is, or will be, alarmed by the Motor-vehicle, or

(c) when he knows or has reason to believe that an accident has occurred to any person or to any animal or vehicle incharge of a person owing to the presence of the Motor-vehicle, and he shall also, if so required give his name and address and the name and address of the owner of such Motor-vehicle.

Reckless driving

5. Whoever drives a Motor-vehicle in a public place recklessly, negligently, or at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case, including the nature, condition and use of the place and the amount of traffic which actually is at the time, or which might reasonably be expected to be, in the place, shall on conviction, be punishable with fine which may extend to five hundred rupees.

PART III.

LICENSING AND CONTROL.

Licensing of drivers.

6. No person shall drive a Motor-vehicle in a public place unless he is licensed in the prescribed manner, and no owner or person incharge of a Motor-vehicle shall allow any person who is not so licensed, to drive it:

Provided that, subject to rules made by [2][the Government] in this behalf, this section shall not apply to a person receiving instructions in driving a Motor-vehicle.

[1]words in clause (*a*) of section 4 substituted by Notification dated 7th Assuj 1989 published in Government Gazatte dated 21st Assuj 1989.

[2]In section 6, 11, 12 13 and 14 for the words "His Highness" the words "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Transfer of licence.

7. The holder of a licence shall not allow it to be used by any other person.

Production of licence.

8. The driver of a Motor-vehicle shall produce his licence upon demand by any Police Officer [1][or any Traffic Officer].

Extent of validity of licence to drive

9. Every licence to drive a Motor-vehicle shall be valid in such area as may be specified therein.

Registration of Motor-vehicle.

10. The owner of every Motor-vehicle shall cause it to be registered in the prescribed manner.

Power of Government to make rules

11. (1) [2][The Government], subject to the condition of previous publication, shall make rules for the purpose of carrying into effect the provisions of this Act and of regulating, in the whole or any part of the State, the use of Motor-vehicles, or any class of Motor-vehicles in public places.

(2) In particular and without prejudice to the generality of the foregoing powers, [2][the Government] may make rules for all or any of the following purposes, namely:—

(a) providing for the registration of Motor-vehicles, and the conditions subject to which such vehicles may be registered, the fees payable in respect of and incidental to registration, the issue of certificates of registration, the notification of any changes of ownership;

(b) providing for facilitating the identification of Motor-vehicles by the assignment of distinguishing number to such vehicles, and the displaying of number and name plates thereon, or in any other manner;

(c) regulating the construction and equipment of Motor-vehicles including the provision and use of lights, bells, horns, brakes, speed-indicators or other appliances;

(d) prescribing the authority by which and the conditions subject to which drivers of Motor-vehicles or any class of any such drivers may be licensed, the fees payable in respect of such licences, and (subject to the provisions of section 9) the area within which and the duration for which licences shall be valid;

(e) prescribing the conditions subject to which and the fees (if any) on payment of which Motor-vehicles may be let or plied for hire in public places generally or in any particular public place;

(f) prescribing the precautions to be observed when Motor-vehicles are standing in any public place;

[1]Words in brackets in section 8 substituted by Notification 7-L/89 published in Government Gazette dated 21st Assuj 1989.

[2]See footnote under section 6.

(g) limiting the speed at which Motor-vehicles may be driven generally or in any particular public place;

(h) prohibiting or regulating the driving of Motor-vehicles in public places, where their use may, in the opinion of of [1][the Government] be attended with danger or inconvenience to the public; and

(i) providing generally for the prevention of danger injury or annoyance to the public or any person or of danger or injury to property or of obstruction to traffic.

(3) All rules made under this section shall be published in the Jammu and Kashmir Government Gazette; and on such publication shall have effect as if enacted in this Act.

Posting of notices.

12. The prescribed authority shall give in the prescribed manner, public notice of any rules, made by [1][the Government] under section 11, prohibiting or regulating the driving of Motor-vehicles in any public place or limiting the speed of Motor-vehicles in any such place and for the purpose of giving effect to any such rule, shall display conspicuous notices at or near the place to which the rule refers.

Power of [1][Government] to exclude areas or Motor-vehicles from this Part

13. [1][The Government] may, by notification in the Jammu and Kashmir Government Gazette, exclude any area, specified in such notification, from the operation of this Part, and may by a like notification, exempt either generally or for a specified period any Motor-vehicle or class of Motor-vehicles from the operation of all or any of the provisions of this Part.

PART IV.

MOTOR-VEHICLES TEMPORARILY LEAVING OR VISITING THE STATE.

Power of [1][Government] to make rules.

14. (1) [1][The Government] may make rules for all or any of the following purposes, namely:—

(i) for the grant and authentication of any travelling passes, certificates or authorities for the use of persons temporarily taking their Motor-vehicles out of the State, or to drivers of such vehicles when proceeding out of the State for the purpose of driving such vehicles, and

(ii) prescribing the conditions subject to which Motor-vehicles brought temporarily into the State by persons in-

[1]See footnote under section 6.

tending to make a temporary stay there may be possessed, used and driven.

(2) All rules made under this section shall be published in the Jammu and Kashmir Government Gazette and on such publication, shall have effect as if enacted in this Act.

Saving.

15. Nothing in this Act or in any rule made thereunder relating to:—

(a) the registration of Motor-vehicles,

(b) requirements as to construct on, identification or equipment of such vehicles, or

(c) he tlicensing or qualifications of drivers of such vehicles,

shall apply in the case of any Motor-vehicle such as is referred to in clause (ii) of ub-section (1) of section 14 or any person possessing, using or driving the same, provided that the requirements of any rule made under the said clause and applicable to such vehicle or person are complied with.

PART V.

MISCELLANEOUS.

Penalties

16. Whoever contravene any of the provisions of this Act or of any rule made thereunder shall, if no other penalty is elsewhere provided in this Act for such contravention be punishable with fine which may extend to Rs. 100 and in the event of such person having been previously convicted of an offence under this Act or any rule made thereunder with fine which may extend to Rs. 200.

[1][Provided that in the event of such contravention on the Jhelum Valley Road [2]"or the Banihal Cart Road " the aforesaid fine may extend to Rs. 300 in case of first conviction and to Rs. 500 for every subsequent conviction.]

[3][**16-A**. The registered or other proprietor of the Motor-vehicles with respect to which an offence punishable under any of the provisions of this Act or of any rule made thereunder has been committed on the Jhelum Valley Road or the Banihal Cart Road also shall be liable and bound to pay the fine or such part of the fine as remains unrealised from the person convicted. In such cases the fine or such part of the

[1]Proviso to section 16 added by Notification 6-L/81 as amended by Notification 11-L/83 published in Government Gazette dated 19th Katik 1981 and Government Gazette dated 15th Bhadon 1983 respectively.

[2]Words "on the Banihal Cart Road" added by Notification 7-L/89 published in Government Gazette dated 21st Assuj 1989.

[3]Section 16-A added by Notification 6-L/81 as amended by Notification 11-2/83 published in Government Gazette dated 19th Katik 1981 and Government Gazette dated 15th Bhadon 1983 respectively.

fine as remains unrealised from the person convicted may be realised from such proprietor in accordance with the provisions of the [1]Code of Criminal Procedure 1969.]

Cognizance of offences

[2]**17.** (1) No Court inferior to that of a Magistrate of the 2nd class shall try any offence punishable under this Act or any rule made thereunder.

(2) All cases of infringement under the Act or any rule made thereunder shall be tried summarily.

Cancellation and suspension of licences and disqualification for obtaining licence.

[3]**18.** (1) Minister-in-charge of the Traffic Control Department may, in his discretion:—

(i) cancel or suspend any licence granted under this Act, and

(ii) declare any person disqualified for obtaining a licence under the Act either permanently or for such period as he thinks fit.

(2) The Inspector-General of Police and the Traffic Superintendent may, suspend any licence granted under this Act for a period of one year and three months resepectively for reasons to be recorded in writing. An appeal from the order of the Traffic Superintendent shall lie to the Inspector General of Police whose decision shall be final.

(3) Any Court by which any person is convicted of an offence against the provisions of this Act or any rule made thereunder or of any offence in connection with the driving of a Motor-vehicle shall, if such person holds a driving licence under the Act, cause particulars of the conviction to be endorsed thereon and may, in respect of such person and of his licence, if any, exercise the like powers as are conferred by sub-section (1) on the Minister-in-charge of the Traffic Control Department:

Provided that no order made by a Court under this sub-section shall affect any person or licence for a period exceeding one year from the date of such conviction.

(4) Any Court before which the holder of a licence under this Act is accused of any offence mentioned in sub-section (3) may suspend such licence until the termination of the proceedings before it.

(5) A copy of every order of cancellation, suspension or disqualification made under this section in respect of a licence or the holder of a licence shall be endorsed on the licence and a copy of every endorsement, in accordance with the

[1]Code of Criminal Procedure (Act XXIII of 1989).

[2]Section 17 amended by Notification 6-L/81, re-amended by Notification 11-L/83 and further amended by Notification 7L-/89 published in Government Gazette dated 19th Katik 1981, Government Gazette dated 15t Bhadon 1983 and Government Gazette dated 21th Assuj 1989 respectively.

[3]Section 18 (as amended by 6-L/81) substituted by Notification 7-L/89 published in Government Gazette dated 21st Assuj 1989.

provisions of this section, shall be sent to the authority by which such licence has been granted.

(6) Every holder of licence shall when called upon to do so, produce his licence before any authority acting under this section.

(7) A person whose licence has been cancelled or suspended in accordance with the provisions of this section, shall during the period for which such order of cancellation has effect, or during the period of suspension, as the case may be, be disqualified for obtaining a licence.

(8) No person whose licence has been endorsed or who has been disqualified for obtaining a licence shall apply for, or obtain a licence without giving particulars of such endorsement of disqualification.

19. Regulation 19 of 1966 is repealed hereby:—

Provided that any appointment, notification, order, rule, form or licence made or issued under the said Regulation, shall so far as it is not inconsistent with the provisions of this Act, continue in force and be deemed to have been issued under the provisions of this Act unless and until it is superseded by any appointment, notification, order, rule, form or licence made or issued under this Act.

20. (1) Any Police Officer [1][or any Traffic Officer] may without an order from a Magistrate and without warrant, arrest any person committing in his view, a breach of any rule made under [1][section 11 and 14], if the name and residence of such persons be unknown to such officer and cannot be ascertained by him then and there.

Arrest of offenders without warrant.

(2) When any such arrest has been made, the provisions of section 57 sub-section (2) and (3) and section 60 to 63 of the Code of Criminal Procedure shall apply.

[2](3) A Traffic Officer may require any person who in his view commits a breach of any provision of this Act or of any rule made thereunder, to execute a bond in the prescribed form with or without surety for the appearance of such person before a Court to answer a specific charge on a specific date and in default of such appearance to forfeit a sum not exceeding Rs. 200.

[2](4) Such person if he declines or fails to execute the afore said bond, when required so to do, under sub-section (3) may be arrested by the said Traffic Officer and handed over to the Police concerned.

[2](5) The provisions of the Code of Criminal Procedure

[1] Words in section 20 (1) substituted by Notification 7-L//89 published in Government Gazette dated 21st Assuj 1989.

[2] Sub-sections (3) (4) (5) of section 20 added by Notification No. 7-L/89 published in Geovrnment Gazette dated 21st Assuj 1989.

relating to the forfeiture of bonds executed under the said Code shall apply to any bond executed under sub-section (3) referred to above. The forfeiture of the sum specified in the bond may also be enforced at the discretion of the Inspector General of Police by deducting from any security deposit under the Act or under any rule framed thereunder in respect of the Motor-vehicle with regard to which the bond was executed.

Saving of liability

21. Nothing in this Act shall affect any liability whatever whether Civil or Criminal of the driver or owner of a Motor-vehcle arising under any other enactment or otherwise.

THE AFGHAN SUBJECTS REGISTRATION NOTIFICATION, 1976.

NOTIFICATION.

In view of the disturbed state of affairs on the North-West Frontier of India, His Highness the Maharaja Sahib Bahadur has been pleased to order that:—

1. No Afghan subject shall enter into or leave the territory of the Jammu and Kashmir State without written permission previously obtained from the District Magistrate or the Sub-Divisional Magistrate concerned, [1][or in the absence of the latter from the Sub-Judge concerned.]

Provided that it shall be competent to the Assistant Inspectors of Customs at Kohala and Ramkot to issue permits for entering the State to such Afghan subjects as wish to enter into the State territory by the the Kohala and Ramkot routes respectively in pursuance of their trade or occupation as cartmen, tonga-drivers, and camel-men etc., [2][and to such Afghan subjects as may come as servants to visitors when the employer gives a certificate to the good character of the Afghan employee and takes upon himself the responsibility of his (the servant's) keeping good behaviour during his stay in the State.]

2. Every Afghan subject already in the State territory shall get himself registered at the nearest Police Station within a period of two weeks from the issue of this Notification, and shall furnish such information to the officer-in-charge of the Police Station as may be required by him for this pur-

[1]Words in brackets in section 1 and 3 inserted *vide* Police Ministers Notification No. 4/ 1980 dated 13th March, 1924, published in Government Gazette dated 19th Chet 1980.

[2]Words in brackets in section 1 added *vide* Notification No. 13/C. H. dated 15th September, 1919 published in Government Gazette dated 13th Assuj 1976.

pose and every Afghan subject who enters into the State shall within 24 hours of his arrival at his destination in the State get himself registered at the nearest Police Station in the same manner.

3. A certificate will be issued by the District Magistrate or the Sub-Divisional Magistrate concerned [1][or in the absence of the latter by the Sub-Judge concerned,] to every Afghan subject on report made by the Officer-in-charge of the Police Station after registration, permitting such Afghan subject to reside within a local area which shall be mentioned and no Afghan subject shall change the place of residence so fixed without giving a notice of the intended change to the District Magistrate or the Sub Divisional Magistrate concerned [1][or in the absence of the latter, to the Sub-Judge concerned] and obtaining his permission to do so.

4. It is an offence to harbour or in any way assist Afghan subjects not in the possession of certificates under (3) above.

5. Every servant of the State and all Jagirdars, Zaildars, Lambardars and Chaukidars are bound to furnish information at the nearest Police Station of the wereabouts and other particulars of every Afghan subject who may be in the State in contravention of the directions contained hereinabove.

6. Any person who infringes the orders contained herein above shall be produced before the District Magistrate or the Sub-divisional Magistrate concerned [1][or in the absence of the latter, before the Sub-Judge concerned] for being dealt with under law, and shall be liable to punishment with a fine which may extend to Rs. 50 or in default of payment of fine to simple imprisonment for a period not exceeding one month.

Explanation.—This order applies to every Afghan subject who is not domiciled in this State and is not one of its subject.

[1]**Words in brackets in sections 3 and 6 inserted *vide* Police Minister's Notification No. 4/1030, dated 13th March 1924 published in Government Gazette dated 19th Chet 1980.**

FORMS.

I. REGISTRATION.—The Officer-in-charge of a Police Station shall register Afghan subjects in the following form:—

No.	Date.	Name and parentage.	Domicile.		Date of arrival in the State.	Approximate period of intended stay.	Nature of business.	Special marks of identification	Thumb impression.	REMARKS.
			Original.	Present.						

II. CERTIFICATE.—This is to certify that . . . . . son of . . . . . is permitted to reside in . . . . . at . . . . . until further orders. He shall not change his place of resident without obtaining the permission of the District /Sub-Divisional Magistrate to do so. Failure to obtain such permission will render him liable to a fine not exceeding Rs. 50 or in default to simple imprisonment not exceeding one month.

Place

Date *Signature.*

III. PERMIT.—(i) This is to certify that . . . . . son of . . . . . is permitted to enter into the Kashmir territory.

He shall get himself registered within 24 hours of his arrival at the destination at the nearest Police Station and shall furnish such information to the Officer-in-charge of the Police Station as may be required by him for this purpose.

Place

Date. *Signature.*

(ii) This is to certify that . . . . . son of . . . . . is permitted to leave the Kashmir territory.

Place

Date *Signature.*

THE EXTRADITION RULES, 1976.

No. IV of 1976.

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Appendix.

EXTRADITION RULES NO. IV OF 1976.

As amended up-to-date.

(*Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's No. 10342 dated 16th October 1919*).

Extradition may be classified as below:—

(a) Surrender of an accused person by the Jammu and Kashmir State, to British India and *vice versa*.

(b) Surrender of an accused person by the Jammu and Kashmir State, on the one side, and the Indian Native States, *i.e.*, Chamba, Patiala, Indore, Rampur, Kapurthala, Sirmore, Bahawalpor, Kotah, Faridkot, [1][Hyderabad,] [2][Mandi] and Mewar, on the other.

(c) Surrender of an accused perso i by the Jammu and Kashmir State, on the one side, and the Poonch Illaqa or Jagir [3](Bhadarwah, or [4]Chenani) on the other side and *vice versa*.

1. Whenever a Police officer from outside the Jammu and Kashmir State may, with the assistance of the State Police, arrest within the State territory a person charged with a cognizable and extraditable offence, committed outside the State territory, it shall be his duty to hand over the person so arrested and property, if any, seized by him to the State Police of the circle in which arrest was made or property seized; and it shall be incumbent upon the latte :—

(i) to receive the person and the property if any,

(ii) to grant acknowledgment to the person making the delivery, and

(iii) to place the accused person and the property so received before the nearest Magistrate within 24 hours or as soon after as possible, with due regard to the distance to be traversed.

2. Th Magistrate shall .he eupon proceed to consider and determine the question of bail in conformity with the provisions of the Code of Criminal Procedure.

3. An application for extradition shall, in every case, be made within two months from the date of a rest. If the application be not so made, the accused person shall, if in custody, be set at liberty, if on bail, his bail bond shall be cancelled, unless he has already been restored to liberty in consequence of the intimation that evidence is not forthcoming.

4. If in any case of arrest or seizure of property, made over under the foregoing rule 1, the Police making the arrest or seizure, consider it necessary to have evidence recorded of such arrest or seizure or of other relavant matters, it shall

[1]Added by Notification 27-L/1989 published in Government Gazette dated 19th Bhadon 1989.

[2]"Mandi" added by Notification No. 30-L/1989 published in Government Gazette dated 14th Assej 1989.

[3]With effect from 5th Sawan, 1997, appeals etc. from Poonch shall be entertained and disposed of by the State High Court of Judicature. Proclamation of His Highness the Maharaja Bahadur published in Government Gazette dated 5th Sawan 1997 (Extraordinary).

[4]Bhadarwah amalgmated to the administration of the State. His Highness' Order, October 13, 1929 published in Government Gazette dated 4th Katik 1986.

[5]With effect from 1st of Katik 1995, the Civil District and Sessions Divisions of Chenani Illaqa subordinated to the appellate and revisional jurisdiction of the State High Court of Judicature and Subjected to its General Superintendence in matters Civil and Criminal. Prime Minister's Notificatioh dated 3rd February, 1939 published in Government Gazette dated 19th Phagan 1995.

request the Magistrate of the locality to record such evidence and to supply copies thereof, to the Police at whose instance the evidence was recorded.

5. In all cases except those in which extradition is claimed by the [1]Poonch Illaqa or the [2]Bhadarwah or [3]Chenani Jagir, the Police making the arrest shall, within the aforesaid two months, apply for extradition in the manner determined by the administration to which they are subject, through the **Resident in Kashmir**, forwarding with the application a summary of the *prima facie* evidence in the prescribed form and attested copies of the depositions of the prosecution witnesses.

6. The Residency office may send the application and the other papers, mentioned in the foregoing paragraph, '[to the Political Minister Jammu and Kashmir Government who shall forward them to the Officer-in-charge of the Extradition work for disposal.]

7. On receipt of the application and evidence, through proper channel, the Officer-in-charge of Extradition work shall examine the *prima facie* evidence and shall, if necessary, call for further evidence, examine in his discretion the person accused and then decide whether the evidence justifies his surrender. If the *prima facie* evidence be found sufficient and satisfactory, the Officer-in-charge of Extradition work shall, by a warrant, authorise the State Police to secure and hand over the accused person to the authority demanding extradition in the manner arranged and to be referred to hereafter.

8. Whenever the State Police is asked by the Police or District Magistrate in British India to arrest a person, residing in Jammu and Kashmir State, on a charge of an extraditable offence, whether cognizable or non-cognizable, the State Police shall proceed to make the arrest and the person arrested shall be dealt with in the manner set out in the foregoing rules.

9. In a case where it is represented that the presence at the place of investigation of the person arrested or the property seized or of both is necessary before formal surrender, to complete the investigation, the accused person under arrest or the property seized or both may, in the discretion of the Officer-in-charge of Extradition work, be allowed to be taken to the place of investigation, on condition of return being made on completion of the investigation.

[1]See footnote 3 on P. 324.

[2]See footnote 4 on P. 324.

[3]See footnote 5 on P. 324.

[4]Substituted by Notification 5-L/84 published in Government Gazette dated 27th Baisakh 1984.

10. Whenever in pursuance of rule 9 it becomes necessary to forward the accused person, who is in custody, to the place of investigation he shall be taken by a joint Police escort of the State and the Administration, at whose instance the arrest was made.

11. If the person required be on bail he shall be directed by the Officer-in-charge of Extradition work to present himself before the District Magistrate of the District concerned.

12. When any property has to be sent to any place in British India, in pursuance of rule 9, it shall be so sent either under a registered parcel addressed to the District Magistrate of the place or in such other manner as, having regard to the nature of property and the circumstances of the case, may seem to the Officer-in-charge of Extradition work to be the best suited.

Searches between Hazara and Kashmir State.

13. When the State Police desire to search for stolen property in the district of Hazara, they must, before making search, inform the District Magistrate or such other authority as he may nominate and carry on the search with the help of the British Indian Police.

Similarly the Hazara District Police, when they cause search to be made for stolen property within the State territory, must, before making such search, send a similar intimation to the Sub-Divisional Magistrate Muzaffarabad and carry out the search with the help of the State Police.

Places of surrender of accused persons.

14. An accused person to be surrendered by the Jammu and Kashmir State shall be made over to the British Indian Police at one of the following centres:—

Sialkote, Murree, Ghari Habib Ullah, Jhelum or Pathankote.

Extradition from British India to Jammu and Kashmir State.

15. The State Police may follow up into British territory any person accused of having committed a cognizable and extraditable offence within the State territory and, with the help of the Police in British India, may arrest such person and hand him over to the British Indian Police, taking a receipt therefor from the receiving officer. Immediate intimation of the arrest and handing over shall be given by the State Police to the Officer-in-charge of Extradition work.

16. The officer making the arrest shall, then, forthwith, prepare *prima facie* evidence and submit to the Officer-in-charge of Extradition work.

17. The Officer-in-charge of Extradition work shall scrutinize the *prima facie* evidence, and , in case, he finds the evi-

dence insufficient, shall with intimation of this fact return the case to the Superintendent of Police; otherwise he shall take necessary steps to secure the surrender of the accused.

18. In Extradition cases under this heading, it shall not be necessary to send or receive *prima facie* evidence, but it will be justifiable to execute process (warrant or summons) issued by the Court of one Adiministration in the territory of the Administration where the the accused is said to be.

Exradition between Jammu and Kashmir State on the one hand and the[1] Poonch Illaqa or Jagir of Bhadarwah or Chenani on the other and *vice versa*.

19. The surrender of an accused person to or by the the Poonch Illaqa, shall be made at Kotli in the Jammu Province and at Uri in the Kashmir Province. The surrender of an accused person to or by the Jagir authorities shall be made at convenient places.

[2]**20.** (1) Extradition of offenders at the instance of Sirmore, Kapurthala, Bahawalpur, Kotah, Faridkote, Chamba, Patiala, Indore, Rampur or Mewar State shall be made according to the foregoing rules through the Residency office.

Extradition between the Jammu and Kashmir State and other States.

(2) Hyderabad State subjects whose prosecution is required by the Jammu and Kashmir State shall be extradited in accordance with the Hyderabad Extradition Act II of 1316-F.

(3) Requisition for Extradition of the subjects of the Jammu and Kashmir State to Hyderabad shall be dealt with in accordance with the provisions of the Indian Extradition Act No. XV of 1903.

21. Members of tribes, which have been declared to be criminal tribes under the laws relating to them, shall be produced before a Magistrate and under his orders, without any further formalities, be made over to the authorities of the place from where they had absconded.

Extradition of members of criminal tribes.

22. A deserter from the British Indian Army or the Imperial Service Troops shall be arrested and surrendered to the Administration at whose instance he was so arrested.

23. When a person is extradited from one administration at the request of another costs of transporting of the person so extradited, for the part of the journey within the territorial limits of the Administration, making the surrender, shall be borne by that Administration, while the rest shall be paid by the Administration at whose instance the surrender was made.

Incidental expenses.

[1]See footnote 3, 4, 5, on P. 324.

[2]Sub-rules (2) and (3) of rule 20 added by Notification 27-L/1989 published in Government Gazette dated 24th Bhadon 1989.

24. The offences enumerated in the list attached hereto have been declared extraditable under Act No. XV of 1903.

[1]**25.** As between Kashmir and Mandi States, it shall be lawful for a Police officer of one State to pursue the accused in the territories, of the other State, but he shall not arrest him without the assistance of the local Police. In the absence of actual assistance, previous consent or knowledge of the Local Police will be sufficient.

[1]**26.** The detention period of the persons to be extradited shall be 3 months between Mandi and Kashmir States.

NOTE.—For agreement regarding the reciprocal arrest and Surrender of Criminals and Stolen property between Gwalior and Jammu and Kashmir Governments *see* Notification No. 1-L/(1995) published in Government Gazette dated 16th Baisakh 1995. (Editor).

APPENDIX.

(The sections referred to are the sections to the Indian Penal Code.)

[2]Riot and offences connected therewith (sections 147 to 158).
Fraud upon creditors (section 206).
Resistance to arrest (section 224).
Offences relating to coin and stamps (sections 230 to 263-A).
Culpable homicide (sections 299 to 304).
Attempt to murder (section 397).
Thagi (sections 310, 311).
Causing miscarriage and abandonment of child (sections 312 to 317).
Causing hurt (sections 323 to 333).
Wrongful confinement (sections 347, 348).
Kidnapping and slavery (sections 360 to 373).
Rape and unnatural offences (sections 375 to 377).
Theft, extortion, robbery, etc., (sections 378 to 414).
Cheating (sections 415 to 420).
Fraudulant deeds, etc., (sections 421 to 424).
Mischief (sections 425 to 440).
Lurking, house trespass (sections 443 to 446).
Forgery, using forged documents (sections 463 to 477-A).
[3]Enticing or taking away or detaining with criminal intent a married woman (section 498).
[4][Desertion from any Unit of Indian State Forces declar-

[1]Rules 25 and 26 added by Notification 30-L/1989 published in Government Gazette dated 14th Assuj 1989.

[2] *Vide* Notification No. 14-L of 1989, published in Government Gazette dated 24th Har 1989. This Notification, however, applies only as between Jammu and Kashmir State and Poonch. *Vide* Notification No. 4-L/1991 published in Government Gazette dated 19th Assuj 1991.

[3] *vide* Government of India Notification No. 361-I, dated 29th May 1929.

[4]Substituted *vide* Notification No. 13-L/1991 published in Government Gazette dated 1st Chet 1991.

ed by the Governor General in Council, by notification in the Gazette of India, to be a Unit desertion from which is an extradition offence].

Piracy by Law of nations.

Sinking or destroying a vessal at sea or attempting or conspiring to do so.

Assault on board a ship on the high sea with intent to destroy life or to do grievous bodily harm.

Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.

Any offence against any section of the Indian Penal Code or against any other Law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all States or specially for any one or more States.

[1]["Offences connected with the traffic in dangerous drugs, *viz.* under Indian Opium Act 1878, the Dargerous Drugs Act 1930, and the Excise and Abkari Acts in so far as they relate to Indian Hemp and traffic in opium and intoxicating drugs as defined in section 3, clauses 8 and 9 of the Jammu and Kashmir Excise Act 1958."

This arrangement takes effect from 1st July 1935.]

[2][As between Kashmir and Mandi States, offence under S. 498 of the Ranbir Penal Code shall be extraditable.]

APPENDIX

THE INDIAN EXTRADITION ACT, 1903.

(XV OF 1903.)

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3. (*1*) Requisition for surrender.
(*2*) Summons or warrant for arrest
(*3*) Inquiry by Magistrate.

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[1]Added *vide* Notification No. 3-L/1992 published in Government Gazette dated 3rd Assuj 1992.

[2]Added *vide* Notification No. 30-L/1989 published in Government Gazette, dated 14th Assuj 1989.

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THE SECOND SCHEDULE.—Enactments repealed.

[*Rep. by Act X of 1914.*]

THE INDIAN EXTRADITION ACT, 1903.

Act No. XV of 1903[1].

[4th November 1903.

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO THE EXTRADITION AND RENDITION OF CRIMINALS.

33 & 34 Vict., c. 52; 36 & 37 Vict., c. 60; 44 & 45 Vict., c. 69.

WHEREAS it is expedient to provide for the more convenient administratin in British India of the Extradition Act, 1870 and 1873, of the Fugitive Offender Act, 1881;

and whereas it is also expedient to amend the extradition of criminals in cases to which the Extradition Acts, 1870 and 1873, do not apply;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Extradition Act, 1903.

(*2*) It extends to the whole of British India (including Bristish Baluchistan, the Santhal Parganas and the Pargana of Spiti); and

(*3*) It shall come into ferce on such day as the Governor General in Council, by notification in the Gazette of India, may direct[2].

Definition.

2. In this Act, unless there is anything repugnant in the subject or context,—

[1] For Statement of Objects and Reasons, *see* Gazette of India, 1901, Pt. V, p. 24; for Report of Select Committee, *see ibid*, 1903, Pt. V, p. 469; for Proceedings in Council, *see*] *ibid*, Pt. VI, pp. 151, 163 and 177.

[2] The Act has been declared to come into force from the 1st June 1904, *see* Gazette of India, 1904, Pt. 1, p. 364.

The Act has been declared in force the Angul District by s. 3 of the Angul Laws Regulation, 1913 (III of 1913).

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(4) Committal.
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(6) Magistrate's report.
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4. (1) Power to Magistrate to issue warrant of arrest in certain cases.
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5. (1) Power of Government to refuse to issue order under section 3 when crime of political character.
(2) Power to Government to discharge any person in custody at any time.
6. Referenoes to "Police Magistrate" and "Secretary of State" in section 3 of Extradition Act, 1870.

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The Act has been declared in force the Angul District by s. 3 of the Angul Laws Regulation, 1913 (III of 1913).

(*a*) "European British subject" means a European British subject as defined by the Code of Criminal Procedure for the time being in force :

(*b*) "extradition offence" means any such offence as is described in the first schedule :

(*c*) "Foreign State" means a State to which for the time being, the Extradition Acts 1870 and 1873, apply :

(*d*) "High Court" means the High Court as defined by the Code of Criminal Procedure for the time being in force :

(*e*) "offence" includes any act wheresoever committed which would, if committed in British India, constitute an offence : and

33 & 34 Vict., c. 52.
36 & 37 Vict., c. 60.

(*f*) "rules" include prescribed forms.

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[1]CHAPTER II.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF FOREIGN STATES.

Requisition for Surrender.

3. (1) Where a requisition is made to the Government of India or to any Local Government by the Government of any Foreign State for the surrender of a fugitive criminal of that State, who is in, or who is suspected of being in British India, the Government of India or the Local Government, as the case may be, may, if it thinks fit, issue an order to any Magistrate who would have had jurisdiction, to inquire into the crime if it had been an offence committed within the local limits of his jurisdiction, directing him to inquire into the case.

Summons or warrant for arrest.

(2) The Magistrate so directed shall issue a summons or warrant for the arrest of the fugitive criminal according as the case appears to be one in which a summons or warrant would ordinarily issue.

Inquiry by Magistrate.

(3) When such criminal appears or is brought before the Magistrate, the Magistrate shall inquire into the case in the same manner and have the same jurisdiction and powers, as nearly as may be, as if the case were one triable by the Court of Session or High Court, and shall take such evidence as may be produced in support of the requisition and on behalf of the fugitive criminal, including any evidence to show that the crime of which such criminal is accused or alleged to have been convicted is an offence of a political character or is not an extradition crime.

Committal.

(4) If the Magistrate is of opinion that a *prima facie* case is made out in support of the requisition, he may commit the fugitive criminal to prison to await the orders of the Government of India or the Local Government, as the case may be.

Bail.

(5) If the Magistrate is of opinion that a *prima facie* case is not made out in support of the requisition, or if the case is one which is bailable under the provisions of the Code of Criminal Procedure for the time being in force, the Magistrate may release the fugitive criminal on bail.

[1]Chapter II has been declared to have effect in British India as if it were part of the Extradition Act, 1870 (33 and 34 Vict., c. 52) : *see* Order in Council, dated the 7th March 1904, Gazette of India, 1904, Pt. I. p. 363.

(6) The Magistrate shall report the result of his inquiry to the Government of India or the Local Government, as the case may be, and shall forward, together with such report, any, written statement which, the fugitive criminal may desire to submit for the consideration of the Government.

Magistrate's report.

(7) If the Government of India or the Local Government, as the case may be, is of opinion that such report or written statement raises an important question of law it may make an order referring such question of law to such High Court as may be named in the order, and the fugitive criminal shall not be surrendered until such question has been decided.

Reference to High Court if Government thinks necessary.

(8) If, upon receipt of such report and statement or upon the decision of any such question, the Government of India or the Local Government, as case may be, is of opinion that the fugitive criminal ought to be surrendered, it may issue a warrant for the custody and removal of such criminal and for his delivery at a place and to a person to be named in the warrant.

Warrant for surrender.

(9) It shall be lawful for any person to whom a warrant is directed in pursuance of sub-section (8), to receive, hold in custody and convey the person mentioned in the warrant to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

Lawfulness of custody and re-taking under warrant for surrender.

(10) If such a warrant as is prescribed by sub-section (8) is not issued and executed in the case of any fugitive criminal, who has been committed to prison under sub-section (4), within two months after such committal, the High Court may, upon application made to it on behalf of such fugitive criminal and upon proof that reasonable notice of the intention to make such application has been given to the Government of India or the Local Government, as the case may be, order such criminal to be discharged, unless sufficient cause is shown to the contrary.

Discharge of fugitive criminal committed to prison after two months.

4. (1) Where it appears to any Magistrate of the first class or any Magistrate specially empowered by the Local Government in this behalf that a person within the local limits of his jurisdiction is a fugitive criminal of a Foreign State, he may, if he thinks fit, issue a warrant for the arrest of such person, on such information or complaint and on such evidence as would, in his opinion, jutify the issue of a warrant if the crime of which he is accused or has been convicted had been committed within the local limits of his jurisdiction.

Magistrate to issue warrant of arrest in certain cases.

(2) The Magistrate shall forthwith report the issue of a warrant under this section to the Local Government.

Issue of warrant to be reported forthwith.

(3) A person arrested on a warrant issued under this section shall not be detained more than two months unless within that period the Magistrate receives an order made with reference to such person under section 3, sub-section (1).

Person arrested not to be detained unless order received.

(4) In the case of a person arrested or detained under this section the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in same manner as if

Bail

such person were accused of committing in British India the crime of which he is accused or has been convicted.

Power of Government to refuse to issue order under section 3 when crime of political character.

5. (1) If the Government of India or any Local Government is of opinion that the crime of which any fugitive criminal of Foreign State is accused or alleged to have been convicted is of a political character, it may, if it think fit, refuse to issue any order under section 3, sub-section (1).

Power of Government to discharge any person in custody at any time.

(2) The Government of India or the Local Government may also at any time stay any proceedings taken under this Chapter and direct any warrant issued under this Chapter to be cancelled and the person for whose arrest such warrant has been issued to be discharged.

References to "Police Magistrate" and "Secretary of State" in section 3 of Extradition Act, 1870.

6. The expressions "the Police Magistrate" and "the Secretary of State" in section 3 of the Extradition Act, 1870, shall be read as referring respectively to the Magistrate directed to inquire into a case under section 3 of this Act, and to the Government of India or the Local Government, as the case may be. 33 & 34 Vict. c. 52

CHAPTER III.

SURRENDER OF FUGITIVE CRIMINALS IN CASE OF STATES OTHER THAN FOREIGN STATES.

Issue of warrant by Political Agent in certain cases.

7. (1) Where an extradition offence has been committed or is supposed to have been committed by a person, not being a European British subject, in the territories of any State not being a Foreign State and such person escapes into or is in British India and the Political Agent in or for such State issues a warrant, addressed to the District Magistrate of any district in which such person is believed to be [1][or if sush person is believed to be in any Presidency-town to the Chief Presidency Magistrate of such town], for his arrest and delivery at a place and to a person or authority indicated in the warrant, such Magistrate shall act in pursuance of such warrant and may give directions accordingly.

Execution of such warrant.

(2) A warrant issued as mentioned in sub-section (1) shall be executed in the manner provided by the law for the time being in force with reference to the execution of warrants, and the accused person, when arrested, shall [1][be produced, before the District Magistrate or Chief Presidency Magistrate, as the case may be, who shall record any statement made by him; such accused person shall then], unless released in accordance with the provisions of this Act, be forwarded to the place and delivered to the person or authority indicated in the warrant.

Proclamation and attachment in case of persons absconding.

(3) The provisions of the Code of Criminal Procedure for the time being in force in relation to proclamation and attachment in the case of persons absconding shall, with any necessary modifications, apply where any warrant has been received by a District Magistrate [1][or Chief Presidency Magistrate] under this section as if the warrant had been issued by himself.

[1] These words were inserted by section 2 of the Indian Extradition (Amendment) Act, 1913 (I of 1913).

Release on giving security.

8. (*1*) Where a Political Agent has directed by endorsement on any such warrant that the person for whose arrest it is issued may be released on executing a bond with sufficient sureties for his attendance before a person or authority indicated in this behalf in the warrant at a specified time and place, the Magistrate to whom the warrant is addressed shall on such security being given release such person from custody.

Magistrate to retain bond.

(*2*) When security is taken under this section, the Magistrate shall certify the fact to the Political Agent who issued the warrant, and shall retain the bond.

Re-arrest in case of default.

(*3*) If the person bound by any such bond does not appear at the time and place specified, the Magistrate may, on being satisfied as to his default, issue a warrant directing that he be re-arrested and handed over to any person authorised by the Political Agent to take him into custody.

Deposit in lieu of bond, and forfeiture of bonds.

(*4*) In the case of any bond executed under this section, the Magistrate may exercise the powers conferred by the Code of Criminal Procedure for the time being in force in relation to taking a deposit in lieu of execution of a bond and with respect to the forfeiture of bonds and the discharge of sureties.

Power to report case for orders of Local Government.

[1][8-A. Notwithstanding anything contained in section 7, sub-section (*2*) or in section 8, when an accused person arrested in accordance with the provisions of section 7 is produced before the District Magistrate or Chief Presidency Magistrate, as the case may be, and statement (if any) of such accused person has been recorded, such Magistrate may, if he thinks fit, before proceeding further report the case to the Local Government and pending the receipts of orders on such report, may detain such accused person in custody or release him on his executing a bond with sufficient sureties for his attendance when required.]

Requisitions by States not being foreign States.

9. When a requisition is made to the Government of India or to any Local Government by or on behalf of any State not being a Foreign State, for the surrender of any person accused of having committed an offence in the territories of such State, such requisition shall except in so far as relates to the taking of evidence to show that the offence is of a political character or is not an extradition crime) be dealt with in accordance with the procedure prescribed by section 3 for requisitions made by the Government of any Foreign State as if it were a requisition made by any such Government under that section :

Provided that, if there is a Political Agent in or for any such State, the requisition shall be made through such Political Agent.

Power to Magistrates to issue warrants of arrest in certain cases.

10. (*1*) If it appears to any Magistrate of the first class or any Magistrate empowered by the Local Government in his behalf that a person within the local limits of his jurisdiction is accused or suspected of having committed an offence in any State not being a Foreign State and that such person may lawfully be surrended to such State, or that a warrant may be issued for his arrest under section 7, the Magistrate may, if he thinks fit, issues a warrant for the arrest of such person on such information or complaint and on such evidence as would, in his opinion, justify the issue of a warrant if the offence had been committed within the local limits of his jurisdiction.

[1]Section 8-A was inserted by section 3 of the Indian Extradition (Amendment) Act, 1913 (1 of 1913).

(2) The Magistrate shall forthwith report the issue of a warrant under this section, if the offence appears or is alleged to have been committed in the territories of a State for which there is a Political Agent, to such Political Agent and in other cases to the Local Government.

Issue of warrant to be reported forthwith.

(3) A person arrested on a warrant issued under this section shall not, without the special sanction of the Local Government, be detained more than two months, unless within such period the Magistrate receives an order made with reference to such person in accordance with the procedure prescribed by section 9, or a warrant for the arrest of such person under section 7.

Limit of time of detention of person arrested.

(4) In the case of a person arrested or detained under this section, the provisions of the Code of Criminal Procedure for the time being in force relating to bail shall apply in the same manner as if such person were accused of committing in British India the offence with which he is charged.

Bail.

11. (1) A person accused of an offence committed in British India, not being the offence for which his surrender is asked, or undergoing sentence under any conviction in British India, shall not be surrendered in compliance with a warrant issued by a Political Agent under section 7 or a requisition made by or on behalf of any State not being a Foreign State under section 9, except on the condition that such person be resurrendered to the Government of India or the Local Government, as the case may be, on the termination of his trial for the offence for which his surrender has been asked:

Surrender of person accused of, or undergoing sentence for, offence in British India.

Provided that no such condition shall be deemed to prevent or postpone the execution of a sentence of death lawfully passed.

(2) On the surrender of a person undergoing sentence under a conviction in British India his sentence shall be deemed to be suspended until the date of his re-surrender, when it shall revive and have effect for the portion thereof which was unexpired at the time of his surrender.

Suspension of sentence on surrender.

12. The provisions of this Chapter with reference to accused persons shall, with any necessary modifications, apply to the case of a person who, having been convicted of an offence in the territories of any State, not being a Foreign State, has escaped into or is in British India before his sentence has expired.

Application of Chapter to convicted persons.

13. Every person who is accused or convited of abetting or attempting to commit any offence shall be deemed, for the purposes of this Chapter, to be accused or convicted of having committed such offence, and shall be liable to be arrested and surrendered accordingly.

Abetment and attempt.

14. It shall be lawful for any person to whom a warrant is directed in pursuance of the provisions of this Chapter, to receive, hold in custody and convey the person mentioned in the warrant, to the place named in the warrant, and, if such person escapes out of any custody to which he may be delivered in pursuance of such warrant, he may be re-taken as a person accused of an offence against the law of British India may be re-taken upon an escape.

Lawfulness of custody and re-taking under warrant issued under Chapter.

15. The Government of India or Local Government may, by order, stay any proceedings taken under this Chapter, and may direct any warrant issued under this Chapter to be cancelled, and the person for whose arrest such warrant has been issued to be discharged.

Power of Government to stay proceedings and discharge person in custody.

16. The provisions of this Chapter shall apply to an offence or to an extradition offence, as the case may be, committed before the passing of this Act, and to an offence in respect of which a a Court of British India has concurrent jurisdiction.

Application of Chapter to offences committed before its commencement.

17. (1) In any proceedings under this Chapter, exhibits and depositions (whether received or taken in the presence of the person against whom they are used or not) and copies thereof, and official certificates of facts and judicial documents stating facts, may, if duly authenticated, be received as evidence.

Receipt in evidence of exhibits, depositions and other documents.

(2) Warrants, depositions or statements on oath with purport to have been issued, received or taken by any Court of Justice outside British India, or copies thereof, and certificates of, or judicial documents stating the fact of, conviction before any such Court, shall be deemed duly authenticated:—

Authentication of the same.

(*a*) if the warrant purports to be signed by a Judge, Magistrate or officer of the State where the same was issued or acting in or for such State:

(*b*) if the depositions or statements or copies thereof purport to be certified, under the hand of a Judge. Magistrate or officer of the State where the same where taken, or acting in or for such State, to be the original depositions or statements or to be true copies thereof, as the case may require:

(*c*) if the certificate of, or judicial document stating the fact of a conviction purport to be certified by a Judge, Magistrate or officer of the State where the conviction took place or acting in or for such State:

(*d*) if the warrants, depositions, statements, copies, certificates and judicial documents as the case may be, are authenticated by the oath of some witness or by the official seal of minister of the State where the same were respectively issued, taken or given.

(3) For the purposes of this section "warrant" includes any judicial document authorising the arrest of any person accused or convicted of an offence.

Definition of "warrant".

18. Nothing in this Chapter shall derogate from the provisions of any treaty for the extradition of offenders, and the procedure provided by any such tready shall be followed in any case to which it applies and the provision of this Act shall be modified accordingly.

Chapter not to derogate from treaties.

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[1]CHAPTER IV.

RENDITION OF FUGITIVE OFFENDERS IN HIS MAJESTY'S DOMINIONS.

19. For the purpose of applying and carrying into effect in British India the provision of the Fugitive Offenders Act, 1981, the following provisions are hereby made:—

Application of Fugitive Offenders Act, 1981.

44 & 45 Vict., c. 69.

(*a*) the powers conferred on "Governors" of British possessions may be exercised by any Local Government:

[1] An order in Council dated 7th March 1904, has declared that this Chapter shall be recognised and given effect to throughout His Majesty's Dominions and on the high seas as if it were a part of the Fugitive Offenders Act 1981 (44 and 45 Vict., c. 69).

(*b*) the powers conferred on a "Superior Court" may be exercised by any Judge of a High Court:

(*c*) the powers conferred on a "Magistrate" may be exercised by any Magistrate of the first class or by any Magistrate empowered by the [1]Local Government in that behalf: and

(*d*) the offences committed in British India to which the Act applies, are piracy, treason, and any offence punishable under the Indian Penal Code with rigorous imprisonment for a term of twelve months or more or with any greater punishment.

CHAPTER V.

OFFENCES COMMITED AT SEA.

Requisition for surrender in case of offence commited at Sea.

20. Where the Government of any State outside India makes a requisition for the surrender of a person accused of an offence commited on board any Vessel on the high seas which comes into any port of British India, the Local Government and any Magistrate having jurisdiction in such port and authorised by the Local Government in this behalf may exercise the powers conferred by this Act.

CHAPTER VI.

EXECUTION OF COMMISSIONS ISSUED BY CRIMINAL COURTS OUTSIDE BRITISH INDIA.

Execution of commissions issued by Criminal Courts outside British India.

21. The testimony of any witness may be obtained in relation to any criminal matter pending in any Court or tribunal in any country or place outside British India in like manner as it may be obtained in any civil matter under the provisions of the Code of Civil Procedure for the time being in force with respect to commissions, and the provisions of that Code relating thereto shall be construed as if the term "suit" included a criminal proceeding:

Provided that this section shall not apply when the evidence is required for a Court or tribunal in any State outside India other than a British Court and the offence is of a political character.

CHAPTER VII.

SUPPLEMENTAL.

Power to make rules.

22. (*1*) The Governor General in council may make [1]rules to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the removal of prisoners accused or in custody under this Act, and their control and maintenance until such time as they are handed over to the persons named in the warrant as are entitled to receive them;

(*b*) the seizure and disposition of any property which is the subject of, or required for proof of, any alleged offence to which this Act applies;

1. For rules *see* Gazette of India, 1904, Pt. I. P. 364; also Gen. S. R. and O.

(c) the pursuit and arrest in British India, by officers of the Government or other persons authorised in this behalf, of persons accused of offences committed elsewhere ; and

(d) the procedure and practice to be observed in extradition proceedings.

(3) Rules made under this section shall be published in the Gazette of India and shall thereupon have effect as if enacted by this Act.

Detention of persons arrested under section 54, clause *seventhly*, Act V, 1898.

23. Notwithstanding anything in the Code of Criminal Procedure, 1898, any person arrested without an order from a Magistrate and without a warrant, in pursuance of the provisions of section 54, clause SEVENTHLY, of the said Code, may, under the orders of a Magistrate within the local limits of whose jurisdiction such arrest was made, be detained in the same manner and subject to the same restrictions as a person arrested on a warrant issued by such Magistrate under section 10.

24. [*Repeals.*] *Rep. by the Repealing and Amending Act, 1914 (X of 1914).*

THE FIRST SCHEDULE

EXTRADITION OFFENCES.

[*See section 2, clause (b), and Chapter III (Surrender of Fugitive Criminals in case of States other than Foreign States).*]

[The sections referred to are the sections of the Indian Penal Code.]

Frauds upon creditors (section 206).
Resistance to arrest (section 224).
Offences relating to coin and stamps (section 230 to 263-A).
Culpable homicide (section 299 to 304).
Attempt to murder (section 307).
Thagi (section 310, 311).
Causing miscarriage, and abandonment of child (sections 312 to 317).
Causing hurt (sections 323 to 333).
Wrongful confinement (sections 347, 348).
Kidnapping and slavery (sections 360 to 373).
Rape and unnatural offences (sections 375 to 377).
Theft, extortion, robbery, etc. (sections 378 to 414).
Cheating (sections 415 to 420).
Fraudulent deeds, etc. (sections 421 to 424).
Mischief (sections 425 to 440).
Lurking house-trespass (sections 443, [1][444]).
Forgery, using forged documents, etc. (sections 463 to 477-A).
"Desertion from any unit of [2][Indian States Forces] declared by the Governor General in Council, by notification in the Gazatte of India to be a unit desertion from which is an extradition offence."[3]
Piracy by law of nations.
Sinking or destroying a vessel at sea, or attempting or conspiring to do so.
Assault on board a ship on the high seas with intent to destroy life or to do griveous bodily harm.
Revolt or conspiracy to revolt by two or more persons on board a ship on the high seas against the authority of the master.
Any offence against any section of the Indian Penal Code or against any other law which may, from time to time, be specified by the Governor General in Council by notification in the Gazette of India either generally for all States or specially for any one or more States.

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[1]These figures were substituted for the figures "446" by section 2 and schedule I of the Repealing and Amending Act, 1914 (X of 1914).
[2]Substituted by Act VIII of 1930.
[3]Substituted by Act 16 of 1922.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

[*Rep. by the Repealing and Amending Act 1914 (X of 1914).*]

THE CRIMINAL TRIBES ACT 1976.

Act No. II of 1976.

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THE SCHEDULE.

THE CRIMINAL TRIBES ACT, 1976.

Act No. II of 1976.

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Home Minister's letter No. 2570, dated 19th November 1918.)

An Act to amend tho law relating to the registration, surveillance and control of Criminal Tribes.

WHEREAS it is expedient to amend the law relating to the registration, surveillance and control of criminal tribes; it is hereby enacted as follows:—

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Criminal Tribes Act of Samvat 1976. and

(2) It extends to the whole of the Jammu and Kashmir State.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,

(1) "criminal tribe" means a tribe, gang or class of persons declared to be a crimina tribe by a notification under section 3;

(2) "prescribed" means prescribed by rules under this Act; and

(3) "tribe," "gang" or "class" includes any part or members of a tribe, gang or class.

NOTIFICATION OF CRIMINAL TRIBES.

Power to declare any tribe, gang or class a criminal tribe.

3. If the [1][Government] has reason to believe that any tribe, gang or class of persons is addicted to the systematic commission of non-bailable offences it may, by notification in the Jammu and Kashmir Government Gazette, declare that such tribe, gang or class is a criminal tribe for the purpose of this Act.

REGISTRATION OF MEMBERS OF CRIMINAL TRIBES.

Registration of members of Criminal tribes.

4. The [1][Government] may direct the District Magistrate to make or to cause to be made a register of the members of any criminal tribe or of any part thereof within his district.

NOTE.—For forms and contents of the register prescribed in the section *see* Rules under section 20, published in Government Gazette, dated 29th Har 1977.

Procedure is making register.

5. Upon receiving such direction, the District Magistrate shall publish a notice in the prescribed manner at the place where the register is to be made and at such other places as he may think fit, calling upon all the members of such criminal tribe, or of such part thereof as is directed to be registered,

(a) to appear at a time and place therein specified before a person appointed by him in this behalf; and

(b) to give to that person such information as may be necessary to enable him to make the register; and

(c) to allow their finger-impressions to be recorded.

Provided that the District Magistrate may exempt any individual member of such criminal tribe or part thereof from registration.

Charges of register.

6. The register when made, shall be placed in the keeping of the Superintendent of Police, who shall, from time to time report to the District Magistrate any alterations which ought in his opinion to be made therein, either by way of addition or erasure.

[1]In sections 3, 4, 10, 11 (1), 12, 16, 17, 18, 20 and 25 for the words "Darbar" the words "Government" substitnted *vide* Act X of 1996, published in the Government Gazette, dated 15th Bhadon 1996.

NOTE.—See also Notification No. 11-L/84, published in Government Gazette dated 9th Magher 1984.

Alteration in register

7. (1) After the register has been placed in the keeping of the Superintendent of Police, no person shall be added to the register and no registration shall be cancelled, except by or by the order in writing of the District Magistarate.

(2) Before the name of any person is added to the register under this section, the District Magistate shall give notice in the prescribed manner to the person concerned,

(a) to appear before him or a person appointed by him in this behalf at a time and place therein specified;

(b) to give him or such person such information as may be necessary to enable him to make the entry; and

(c) to allow his finger-impressions to be recorded.

Complaints of entries in register.

8. Any person deeming himself aggrieved by any entry made, or proposed to be made in such register either when the register is first made or subsequently, may complain to the District Magistrate against such entry, and the Magistrate shall retain such person's name on the register or enter it therein, or erase it therefrom, as he may see fit.

Power to take finger-impressions at any time.

9. The District Magistrate may at any time order the finger-impressions of a registered member of a criminal tribe to be taken.

Member of criminal tribes to report themselves or notify residence.

10. The [1][Government] may, by notification in the Jammu and Kashmir Government Gazette, direct in respect of any criminal tribe that every registered member thereof shall, in the prescribed manner,

(a) report himself at fixed intervals; or

(b) notify his place of residence and any change or intended change of residence and any absence or intended absence from his residence.

RESTRICTION OF MOVEMENTS OF CRIMINAL TRIBES.

Procedure when deemed expedient to restrict movements of, or settle, criminal tribes.

11. (1) If the [2][Government or any officer appointed by the Government in this behalf] considers that it is expedient that any criminal tribe should be—

(a) restricted in its movements to any specified area, or

(b) settled in any place of residence,

he may report the case for the order of the [1][Government].

[1]See footnote under section 3.

[2]Words substituted for "Minster-in-charge of the Police Department" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(2) Every such report shall state—

(i) the nature and the circumstances of the offences in which the members of the criminal tribe are believed to have been concerned, and the reasons for such belief;

(ii) whether such criminal tribe follows any lawful occupation, and whether such occupation is in the opinion of [1][the Government or any officer appointed by Government in this behalf] the real occupation of such criminal tribe, or a pretence for the purpose of facilitating the commission of crimes and the grounds on which such opinion is based;

(iii) the area to which it is proposed to restrict the movements of such criminal tribe or the place of residence in which it is proposed to settle it; and

(iv) the manner in which it is proposed that such criminal tribe shall earn its living within the restricted area or in the settlement, and the arrangements which are proposed to be made therefor.

Notification restricting movements of or settling tribes.

12. If on the consideration of any such report the [2][Government] is satisfied—

(a) that it is expedient to restrict the movements of such criminal tribe, or to settle it in a place of residence, and

(b) that the means by which it is proposed that such criminal tribe shall earn its living are adequate,

the [2][Government] may itself or authorise [1][any officer appointed by the Government in this behalf] to publish in the Jammu and Kashmir Government Gazette a notification declaring that such criminal tribe shall be restricted in its movements to the area specified or shall be settled in the place of residence specified and the [1][Government or any officer appointed by the Government in this behalf] may publish a notification accordingly.

Power to vary specified area or place of residence.

13. The [1][Government or any officer appointed by the Government in this behalf] may at any time by a like notification vary the terms of any notification published by him under section 12 by specifying another area to which the movements of the criminal tribe shall be restricted, or another place of residence in which it shall be settled.

Verification of presence of members of tribe within prescribed area or place of residence.

14. Every registered member of a criminal tribe, whose movements have been restricted or which has been settled in a place of residence, shall attend at such place and at such time and before such person as may be prescribed in this behalf.

[1]Words in brackets substituted for the words "Minister-in- charge of the Police Department" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[2]See footnote under section 3.

15. When the area to which the movements of a criminal tribe or any members thereof are restricted, or the place of residence in which a criminal tribe is settled, is situated in a a district other than that in which the register mentioned in section 4 was prepared, the register shall be transferred to the Superintendent of Police concerned and District Magistrate of the said District shall thereupon be empowered to exercise the powers provided in sections 7, 8 and 9.

Transfer of register in certain cases.

SETTLEMENTS AND SCHOOLS.

16. The [1][Government] may establish industrial, agricultural or reformatory settlements and may place therein any criminal tribe or any part thereof, in respect of which, a notification has been published under section 12.

Power to place tribe in settlement.

17. (1) The [1][Government] may establish industrial, agricultural or reformatory schools for children and may separate and remove from their parents or guardians and place in such schools the children of members of any criminal tribe in respect of which a notification has been published under section 12.

Power to place children in schools and to apprentice them.

(2) For every school established under sub-section (1) a Superintendent shall be appointed by the [1][Government].

(3) The provisions of sections 18 to 22 (both inclusive) of the Reformatory Schools Act, 1897, shall, so far as may be, apply in the case of every school for children established under this section as if the Superintendent of such school were a Superintendent and the children placed in such schools were youthful offenders within the meaning of that Act.

(4) For the purposes of this section the term "children" includes all persons under the age of 18 and above the age of 6 years.

(5) The decision of the District Magistrate as to the age of any person for the purposes of this section shall be final.

18. The [1][Government] may at any time, by general or special order, direct any person who may be in any industrial, agricultural or reformatory settlement or school in the province,

Power of Government to discharge or remove persons from settlement or school.

(a) to be discharged, or

(b) to be removed to some other like settlement or school in the State.

[1] See footnote under section 3.

19. Every order of the District Magistrate passed under section 5, 6, 7 or 8 shall be subject to revision by the High Court, Jammu and Kashmir State.

RULES.

Powers to make rules.

20. (1) The [1][Government] may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for and regulate—

(a) the form and contents of the register prescribed in section 4;

(b) the mode in which the notice prescribed in section 5 shall be published and the means by which the persons whom it concerns and the village headman, village watchman and land-owners or occupiers of the village in which such persons reside, or the agents of such land-owners or occupiers, shall be informed of its publications;

(c) the addition of names to the register and the erasure of names therein, and the mode in which the notice prescribed in section 7 shall be given;

(d) the mode in which the persons mentioned in section 10 shall report themselves, or notify their residence or any change or intended change of residence or any absence or intended absence;

(e) the nature of the restrictions to be observed by persons whose movements have been restricted by notifications under section 12 or section 13;

(f) the conditions as to holding passes under which persons may be permitted to leave the place in which they are settled or confined or the area to which their movements are restricted;

(g) the conditions to be inserted in any such pass in regard to:

(i) the places where the holder of the pass may go or reside;

(ii) the persons before whom, from time to time, he shall be bound to present himself; and

(iii) the time during which he may absent himself,

(h) the place and time at which and the persons before whom members of a criminal tribe shall attend in accordance with the provisions of section 14;

[1]See footnote under section 3.

(i) the inspection of the residences and villages of any criminal tribe;

(j) the terms upon which registered members of criminal tribes may be discharged from operation of this Act;

(k) the management, control, and supervisions of industrial, agriculture or reformatory settlements and schools;

(l) the works on which and the hours during which persons placed in an industrial, agricultural or reformatory settlement shall be employed, the rates at which they shall be paid, and the disposal, for the benefit of such persons, of the surplus proceeds, of their labour; and

(m) the discipline to which persons endeavouring to escape from any industrial, agricultural or reformatory settlement or school, or otherwise offending against the rules for the time being in force, shall be subject, the periodical visitation of such settlement or school, and the removal from it of such persons as it shall seem expedient to remove.

PENALTIES AND PROCEDURE.

Panalties for failure to comply with terms at notice under section 5 or 7.

21. Whoever, being a member of a criminal tribe, without lawful excuse, (the burden of proving shall lie upon him,)

(a) fails to appear in compliance with a notice issued under section 5, or 7, or

(b) intentionally omits to furnish any information required under those sections, or

(c) when required to furnish information under either of those sections, furnishes as true any information which he knows or has reason to believe to be false, or

(d) refuses to allow his finger-impressions to be taken, may be arrested without warrant and shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

Penalties for breach of rules.

22. (1) Whoever, being a registered member of a criminal tribe, violates a rule made under clause (e), clause (f) or clause (g) of section 20 shall be punishable with imprisonment for a term which may extend,—

(a) on first conviction to one year,

(b) on a second conviction to two years, and

(c) on any subsequent conviction to three years.

(2) Whoever, being a registered member of a criminal tribe, violates a rule made under any other clause of section

20 shall be punishable:—

(a) on a first conviction, with imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both and

(b) on any subsequent conviction, with imprisonment for a term which may extend to one year or with fine which may extend to five hundred rupees, or with both.

Enhanced punishment for certain offences by members of criminal tribe after previous conviction.

23. (1) Whoever, being a member of any criminal tribe, and having been convicted of any of the offences under the Ranbir Dand Bidhi specified in the schedule, is hereinafter convicted of the same or any other offence specified in the said schedule, shall be liable—

(a) on a second conviction to imprisonment for a term which may extend to 7 years, and

(b) on a third conviction, to imprisonment for life.

(2) Nothing in this section shall effect the liability of such person to any further or other punishment to which he may be liable under the [1]Ranbir Dand Bidhi or any other law.

Punishment for registered members of criminal tribe found under suspicious circumstances.

24. Whoever, being a registered member of any criminal tribe, is found in any place under such circumbstances as to satisfy the Court—

(a) that he was about to commit, or aid in the commission of, theft or robbery, or

(b) that he was waiting for an opportunity to commit theft or robbery,

shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine which may extend to one thousand rupees.

Arrest of registered person found beyond prescribed limits.

25. (1) Whoever, being a registered member of a criminal tribe:—

(a) is found in any part of the State, beyond the area, if any, prescribed for his residence, without the prescribed pass, or in a place or at a time not permitted by the condition of his pass, or

(b) escapes from an industrial, agricultural or reformatory settlement or school;

may be arrested without warrant by any Police Officer, village headman or village watchman, and taken before any Magistrate who on proof of the facts shall order him to be removed to the district in which he ought to have resided or to the settlement or school from which he has escaped (as the

[1]Ranbir Penal Code.

case may be), there to be dealt with in accordance with this Act or any rules made thereunder.

(2) The rules for the time being in force for the removal of prisoners shall apply to all persons removed under this section or under any other provision of this Act:

Provided that an order from the [1][Government] or from the [2][Inspector General of Prisons] shall not be necessary for the removal of such persons.

Duties of village headman, village watchman and owners or occupiers of land to give information in certain cases.

26. (1) Every village headman and village watchman in a village in which any person belonging to a criminal tribe resides, and every owner or occupier of land on which any such persons reside or the agent of any such owner or occupier shall forthwith communicate to the officer-in-charge of the nearest Police Station any information which he may obtain of—

(a) the failure of any such person to appear and give information as directed in section 5; or

(b) the departure of any registered member of a criminal tribe from such village or from such land (as the case may be).

(2) Every village headman and village watchman in a village, and every owner or occupier of land or the agent of such owner or occupier shall forthwith communicate to the officer-in-charge of the nearest Police Station any information which he may obtain of the arrival at such village or on such land (as the case may be) of any persons who may reasonably be suspected of belonging to any criminal tribes.

Panalties for breach of such duties.

27. Any village headman, village watchman, owner or occupier of land or the agent of such owner or occupier, who fails to comply with the requirements of section 26 shall be deemed to have committed an offence punishable under [3]section 136 of Ranbir Dand Bidhi.

SUPPLEMENTAL.

Bar of jurisdiction of courts in questions relating to notifications under sections 3, 12 and 13.

28. No court of justice shall question the validity of any notification published under the provisions of section 3, section 12 or section 13 on the ground that the provisions hereinbefore contained or any of them have not been

[1]See footnote under section 3.

[2]In section 25 (2) proviso words "Inspector General of Prisons" substituted for "Minister-in-charge Jail Department" *vide* Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

[3]Sections 175, 176 Ranbir Penal Code.

complied with or entertain in any form whatever the question whether they have been complied with, but every such notification shall be conclusive proof that it has been issued in accordance with law.

Repeal

29. The law relating to Criminal Tribes as sanctioned under State Council Resolution No. 34 dated 8th February 1890 is hereby repealed.

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[1]The Schedule.

CHAPTER XII.

R.P.C.	R.D.B.	
231	177	Counterfeiting coin.
232	177-A	Counterfeiting King's coin.
233	178	Making or selling instrument for counterfeiting coin.
234	178-A	Making or selling instrument for counterfeiting King's coin.
235	179	Possession of instrument or material for the purpose of using the same for counterfeiting coin.
239	182	Delivery of coin, possessed with the knowledge that it is counterfeit.
240	182-A	Delivery of King's coin possessed with the knowledge that it is counterfeit.
242	184	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.
243	184-A	Possession of King's coin by a person who knew it to counterfeit when he became possessed thereof.

CHAPTER XVI.

299	220	Culpable homicide.
307	229	Attempt to murder.
308	230	Attempt to commit culpable homicide.
322	242	Voluntarily causing grievous hurt.
324 **326**	244	Voluntarily causing hurt by dangerous weapons or means.
827	246	Voluntarily causing hurt to extort property or to constrain to an illegal act.

[1]Corresponding numbers of sections of the Ranbir Penal Code are given by the Editor for facility of reference.

328	247	Causing hurt by means of poison, etc., with intent to commit an offence.
329	246	Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.
332	249	Voluntarily causing hurt to deter public servant from his duty.
333		Voluntarily causing grievous hurt to deter public servant from his duty.
369	275	Kidnapping child under 10 years with intent to steal from its person.

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382	287	Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft.
383	288	Extortion.
385	290	Putting person in fear of injury in order to commit extortion.
386	291	Extortion by putting a person in fear of death or grievous hurt.
390	293	Robbery.
391	297	Dacoity.
393	295	Attempt to commit robbery.
394	296	Voluntarily causing hurt in committing robbery.
397	300	Robbery or dacoity, with attempt to cause death or grievous hurt.
398	301	Attempt to commit robbery or dacoity when armed with deadly weapon.
399 **402**	302	Making preparation to commit dacoity.
454 **456**	346	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.
455 **458**	347	Lurking house-trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.
459	348	Grievous hurt caused whilst committing lurking house-breaking.
460	349	All persons jointly concerned in lurking house-trespass or house-breaking by night punishable with death or grievous hurt caused by one of them.

THE STATE BUILDINGS ACT, 1976

CONTENTS.

SECTION.

1. Short title, extent and commencement.

2. Municipal authority defined.

3. Exemption of certain State buildings from Municipals Laws to regulate the erection, etc. of buildings within Municipalities.

SECTION.

4. Objections or suggestions as to erection, etc. of certain State buildings within Municipalities how to be made and dealt with.

THE STATE BUILDINGS ACT, 1976.

(NOTIFICATION NO. 19 DATED 6TH MARCH 1920.)

(Sanctioned by His Highness the Maharaja Sahib Bahadur vide Chief Minister's letter No 16679, dated 31st January 1920.)

An Act to provide for the exemption from the operation of Municipal Building Laws of certain Buildings and Lands which are the property, or in the occupation, of the State, and situate within the limits of Municipality.

WHEREAS it is expedient to provide for the exemption from the operation of Municipal Building Laws of certain buildings and lands which are the property, or in the occupation, of the State, and situate within the limits of a Municipality; it is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the State Buildings Act, 1976.

(2) It extends to the whole of Jammu and Kashmir State; and

(3) It shall come into force at once.

"Municipal authority" defined.

2. In this Act the expression "Municipal authority" includes a Municipal Committee or a body of Municipal Commissioners constituted by, or under the provisions of, any law or enactment for the time being in force.

Exemption of certain State buildings from Municipal Laws to regulate the erection, etc. of buildings within Municipalities.

3. Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any Municipality, shall apply to any building used or required for the public service, or for any public purpose, which is the property, or in the occupation, of the State, or which is to be erected on land

which is the property, or in the occupation of the State:

Provided that, where the erection, re-erection, construction, or material structural alteration, of any such building as aforesaid (not being a building connected with State defence, or building, the plan or construction of which ought, in the opinion of the Public Works Minister, to be treated as confidential or secret), is contemplated, reasonable notice of the proposed work shall be given to the Municipal authority before it is commenced.

Provided further that clause 4 of the rules relating to construction of buildings in the restricted area of Srinagar sanctioned by His Highness (*vide* No. 4/C.O., dated the 17th January 1915) shall also *mutatis mutandis* apply to any such building as aforesaid.

[1]*Explanation.*—The reference required to be made to the Resident in Kashmir under the rule mentioned in the last foregoing proviso shall be made by the Public Works Minister.

Objections or suggestions as to erection, etc. of certain State buildings within Municipalities how to be made and dealt with.

4. (1) In the case of any such building as is mentioned in the last preceding section (not being a building connected with State defence, or a building the plan or construction of which ought, in the opinion of the Public Works Minister to be treated as confidential or secret), the Municipal authority, or any person authorised by it in this behalf, may, with the permission of the Public Works Minister, inspect the land and building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may be, and may submit to the Public Works Minister a statement in writing of any objections or suggestions which such Municipal authority may deem fit to make with reference to such erection, re-erection, construction, or material structural alteration.

(2) Every objection or suggestion submitted as aforesaid shall be considered by the Public Works Minister, who shall, after such investigation (if any) as he shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed, or altered, as the case may be, in accordance with such orders:

Provided that, if the Public Works Minister overrules or disregards any such objection or suggestion as aforesaid, he shall give his reasons for so doing in writing.

(3) Every order passed by the Public Works Minister under this section will be subject to revision by His Highness and the decision of His Highness thereon shall be final.

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[1]Reference to the Resident has been discontinued by orders of His Highness passed in July, 1927.

THE PUBLIC PROSTITUTES REGISTRATION RULES, 1977.

CONTENTS.

RULE.		RULE.	
1.	Title.	15.	Brothel keeper not to allow unregistered public prostitute to resort for prostitution in brothel.
2.	Extent.	16.	Power of Minister-in-charge of Municipalities to prohibit brothel or residence of public prostitute within any specified locality.
3.	Definition.	17.	Power of Minister-in-charge of Municipalities to prohibit public prostitute from visiting any specified locality during certain hours and subject to conditions prescribed.
4.	Duty of public prostitute to have her name registered.	18.	Penalties.
5.	Register.		
6.	Application for registration		Schedule A.
7.	Registration.		Schedule B.
8.	Cancellation.		
9.	Prohibition of transfer of certificate of registration.		
10.	Power of inspection.		
11.	Change of residence.		
12.	Leaving place of registration.		
13.	Removal of name on account of permanent departure.		
14.	Registration at one place will not entitle residence or business at another.		

THE PUBLIC PROSTITUTES REGISTRATION RULES, 1977.

Rules to provide for the control of Public Prostitutes.

(Sanctioned by the Durbar vide Chief Minister's letter No. 17197 dated 12th February 1921.)

Title

1. These rules may be called the "Public Prostitutes Registration Rules, 1977".

Extent

2. (i) These rules shall not come into force in any part of the Jammu and Kashmir State unless and until they have been declared applicable thereto by the [1][Minister-in-charge of Municipalities] as hereinafter provided.

(ii) The Minister-in-charge of Municipalities, may, by a notification in the Jammu and Kashmir Government Gazette, apply these rules to any place within the Jammu and Kashmir State. The limits of such place shall for the purposes of these rules, be such as may be defined in the said notification.

(iii) The Minister-in-charge of Municipalities may, in the

[1]Wherever the words "Home Minister" occur in the rules, the words "the Minister-in-charge of Municipalities" substituted. See also footnote 1 under Rule 4.

manner aforesaid, cancel or amend any notification issued under clause (ii) of this rule.

Definition.

3. In these rules, "Public Prostitute" means a woman who earns her livelihood by offering her person to lewdness for hire.

Duty of public prostitute to have her name registered.

[1]**4.** Every public prostitute starting or carrying on or continuing business as such public prostitute, within the limits of any place where these rules are in force shall, in the manner herein provided have her name entered in the register kept at such place and obtain a certificate of registration as prescribed by rules 5 and 7.

Register.

5. (i) A register of public prostitutes shall be prepared in the form prescribed in schedule A of these rules and shall be kept in the office of the Wazir-i-Wazarat or other public servant especially empowered in this behalf by the Minister-in-charge of Municipalities with the previous sanction of His Highness.

(ii) The register shall from time to time be revised under the orders of the Minister-in-charge of Municipalities.

Application for registration.

6. (i) Every woman who is bound to be registered as a public prostitute at a place where these rules are in force shall make an application in person for registration to the officer charged with preparation of the register provided by rule 5 at such place.

(ii) The application shall be in writing, [2][shall be accompanied by a payment of Rs. 5 as registration fee] and shall state the name, parentage, caste, age, residence and business of the applicant and shall be signed and verified by the applicant in the manner provided for signing and verifying the plaints by the Code of Civil Procedure.

Registrtaion.

7. (i) On receipt of application made to him under rule 6, the officer concerned shall, unless he considers it expedient on grounds of public policy to disallow it, cause necessary particulars to be entered in the register prepared in his office under rule 5, and a certificate of registration to be prepared under his signature in the form prescribed in Schedule B of these rules and issued to the applicant.

(ii) The certificate issued under this rule shall be a presumptive proof of its holder being a person registered under these rules.

[1] Proviso to rule 4 omitted, *vide* Notification No. 12-S dated 9th October 1933 published in Government Gazette dated 3rd Katik 1990.

[2] In rule 6 (ii) words in brackets added *vide* Notification 12-S dated 9th October, 1933 published in Government Gazette dated 3rd Katik 1990.

8. (i) Any registered public prostitute may, at any time, apply to have her name removed from the register on the ground that she intends to cease the business for which her name is registered and if the officer, in whose register she is entered, is satisfied that he has truly stated such intention, her name shall be removed from the register.

Cancellation.

(ii) The officer charged with the preparation of the register provided by rule 5 on being satisfied that carrying on of business by a registered public prostitute, in any place within his jurisdiction, is undesirable on grounds of public policy, may remove her name from his register, and on such removal of her name from the register she shall cease to carry on her business within the limits of such place. [1][The notice informing a public prostitute to cease business in a certain locality shall be served on her in the manner prescribed for the service of summons in the Code of Civil Procedure.]

(iii) The certificate of registration shall be returned by the person whose name has been so removed from the register to the officer concerned and cancelled by him.

9. No public prostitute registered under these rules shall transfer or lend her certificate of registration to any other person on any account or for any purpose whatsoever.

Probibition of transfer of certificate of registration.

10. It shall be competent to the officer, in whose register a public prostitute has been registered, to inspect or to a Police Officer not lower in rank than that of an officer in charge of a Police Station to inspect her certificate of registration and every such public prostitute when required to do so shall exhibit her certificate of registration to such officer.

Power of inspection.

11. When any registered public prostitute wishes to change her residence in any place where she has been registered she shall signify her intention to the registering officer of such place who shall cause such change or residence to be noted in the register and in her certificate of registration.

Change of residence.

12. Whenever any registered public prostitute wishes to leave the place in which she has been registered for a time or permanently, she shall signify her intention to the registering officer of such place. The officer shall cause a note of her intention to be made in the register and in her certificate of registration. If she intends

Leaving place of registration.

[1]**Words in brackets in rule 8 (ii) added *vide* Notification No. 12-S dated 9th October, 1933 published in Government Gazette dated 3rd Katik 1990.**

to leave the place permanently she shall before departure deliver her certificate to the said officer.

Removal of name on account of permanent departure.

13. On the permanent departure from the place of registration or on the death of any registered public prostitute, her name shall be removed from the register, and certificate of registration shall be cancelled.

Registration at one place will not entitle residence or business at another.

14. The registration of a public prostitute, or issue of certificate of such registration in her favour at one place shall not in any way authorise such public prostitue to carry on her business in any other place where these rules are in force and she has not been duly registered.

Brothel keeper not to allow unregistered public prostitute to resort for prostitution in brothel.

15. If any brothel keeper has reason to believe any woman to be a public prostitute and not to be registered under these rules, he or she shall not induce her or suffer her to resort or be for the purpose of prostitution, to or in the house, room, tent, boat, or place in which he or she carried on his or her business.

Explanation.—"Brothel keeper" means the occupier of any house, room, tent, boat, or place resorted to by persons of both sexes for the purpose of committing sexual immorality and every person managing or assisting in the management of any such house, room, tent, boat or place.

Power of Minister-in-charge of Municipalities to prohibit brothel or residence of public prostitute within any specified locality.

16. The Minister-in-charge of Municipalities, may with the sanction of His Highness, by notification published in the Jammu and Kashmir Government Gazette, prohibit the keeping of a brothel or the residence of a public prostitute in any specified part of the place to which these rules apply.

Power of Minister-in-charge of Municipalities to prohibit public prostitute from visiting any specified locality during certain hours and subject to conditions prescribed.

17. The Minister-in-charge of Municipalities may, by notification published within the limits of the place to which these rules apply, prohibit public prostitues from visiting any specified locality within such place, except during such hours and subject to such conditions as he may think fit to prescribe.

[1]**18.** Whoever acts in contravention of these rules or any notice or orders issued thereunder shall, on convict on before a Magistrate, be liable to be sentenced to a fine not exceeding Rs. 100 or simple imprisonment not exceeding a period of one month or with both.

[1]Rule 18 added *vide* Notification No. 12-S dated 9th October, 1933 published in the Government Gazette dated 3rd Katik 1990.

SCHEDULE A (RULE 5).

Registration of public prostitutes etc.——————
at——————.

No.	Date of registering.	Name	Parentage.	Caste.	Age and personal appearance.	Place of residence	Nature of business.	Remarks.
								Entries under rules 8, 11, 12, and 13.

SCHEDULE B (RULE 7).

Certificate of registration . . . . . at . . . . . .

I (name of officer) . . . . . hereby certify that (name of applicant) . . . . . daughter of . . . . . caste . . . . . age . . . . who . . . . . (personal appearance) has been registered (*vide* No. . . . . dated . . . . . of the Register of public prostitutes) as a public prostitute and her place of residence shall be . . . . . dated (place) the . . . . . 19 . . . . .

THE SRI PRATAP JAMMU AND KASHMIR LAWS CONSOLIDATION ACT, 1977.

Act No. IV of 1977.

CONTENTS.

Preamble.

SECTION.

1. Title, extent and commencement.
2. Repealed.
3. Repealed.
4. Laws in force.
5. Customs and Mercantile usages.

6 to 9-A. Repealed.

10. His Highness' powers under the constitution.

SECTION.

11. Extent.
12. Repealed.

The First Schedule—Repealed.

The Second Schedule—Repealed.

The Third Schedule.—Repealed.

The Fourth Schedule.—Repealed.

THE SRI PRATAP JAMMU & KASHMIR LAWS CONSOLIDATION ACT, 1977.

Act No. IV of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's letter No. 8372, dated the 11th September 1920 and State Council Resolution No. 1, dated 8th April 1925 (Notification No. 14-L/82).*]

WHEREAS it is expedient to amend, consolidate and codify as far as possible and declare the laws generally administered and to be administered by the Civil and Criminal Courts of the Jammu and Kashmir State; it is hereby enacted as follows:—

PRELIMINARY.

1. (i) This Act may be called the Sri Pratap Jammu and Kashmir Laws (Consolidation) Act, 1977.

(ii) It extends to the whole of the State of Jammu and Kashmir.

[1](iii) And it shall come into force on and from such date as may by notification in the Jammu and Kashmir Government Gazette be specified in this behalf.

[2]**2.** Repealed.

[2]**3** Repealed.

4. (1) The Laws administered and to be administered by the Civil and Criminal Courts of the State of Jammu and Kashmir are and shall be as follows:—

Laws in force.

[3][(a) The Acts for the time being in force in the the Jammu and Kashmir State;

(b) Proclamations and Ordinances made and passed by His Highness by virtue of his inherent authority and for the the time being in force;

(c) the rules having the force of law made and promugated under the provisions of any Act or law for the

[1]It was enforced for a period of two years in the first instance from 1st Baisakh, 1978 (per Chief Minister's endorsement No. 8372, dated 11th September 1920 and letter No. 115291/9 gdl date i the 1st November 1920). From time to time its enforcement was extended for further periods. From 1st Baisakh, 1981 it was ordered that it should remain and continue in force without limit of time *vide* State Council Resolution No. 1, dated 8th April, 1925 (Notification No. 14-L/81).

[2] Sections 2 and 3 repealed *vide* Act XI of 1996 published in the Government Gazette dated 15th Bhadon 1996.

[3]In section 4 clauses (*a*), (*b*) and (*c*) substituted and clause (*f*) made sub-section (2) of this section and rest of this section numbered as sub-section (1) *vide* Act XI of 1996 published in the Government Gazette dated 15th Bhadon 1996.

time being in force in the State of Jammu and Kashmir;]

(d) in questions regarding succession, inheritance, special property of females, betrothals, marriage, divorce, dower, adoption, guardianship, minority, bastardy, family relations, wills, legacies, gifts, *waqf*, partitions, castes or any religious usage or institution, the rule of decision is and shall be—

the Mohammedan Law in cases where the parties are Mohammedans and the Hindu Law in cases where the parties are Hindus, except in so far as such law has been, by this or any other enactment, altered or abolished or has been modified by any custom applicable to the parties concerned which is not contrary to justice, equity or good conscience and has not been by this or any other enactment altered or abolished, and has not been declared to be void by any competent authority;

(e) in questions relating to the Law of Tort, the State Courts shall follow, as far as practicable, the British Indian Law.

(2) In cases not otherwise specially provided for, the Courts shall act according to justice, equity and good conscience.

5. All local customs and mercantile usages shall be regarded as valid, unless they are contrary to justice, equity and good conscience, or have been, or shall be, declared to be void by any competent authority.

Customs and Mercantile usages.

[1]**6** Repealed.

[1]**7.** Repealed.

[1]**8.** Repealed.

[1]**9.** Repealed.

[1]**9-A.** Repealed.

10. Nothing contained in any law or Act shall in any way be deemed to derogate from the powers of His Highness vested in him under the constitution.

The Highness' powers under the constitution.

11. [2][All Acts now in force or hereafter to be enacted] shall, unless otherwise expressly provided, extend to the whole of Jammu and Kashmir State, but His Highness may, in his discretion, by notification in the Jammu and Kashmir Government Gazette, exempt any area or class of persons from the operation of any Act or restrict the application of any Act to any specified area or class of persons.

[Extent.

[1]Sections 6, 7, 8,9 and 9-A repealed *vide* Act XI of 1996 published in the Government Gazette dated 15th Bhadon 1996.

[2]In section 11 words in brackets substituted for the words "The enactment embodied in schedules II and III of this Regulation" *vide* Act XI of 1996 published in Government Gazette dated 15th Bhadon 1996.

[1]**12.** Repealed.

[2]The First Scheduule ..	.. Repealed.
[2]The Second Schedule ..	.. Repealed.
[2]The Third Schedule ..	.. Repealed.
[2]The Fourth Schedule ..	.. Repealed.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1977.

Act No. V of 1977.

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ANCIENT MONUMENTS.

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8. Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner.
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[2]Section 12 repealed *vide* Act [XIV] of 1996 [published in] Government Gazette dated 22nd Bhadon 1996.

[3]The First Schedule, the Second schedule, the Third Schedule and the Fourth schedule repealed *vide* Act XI of 1996 published in Government Gazette dated 15th Bhadon 1996.

THE ANCIENT MONUMENTS PRESERVATION ACT, 1977.

Act No. V of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920 and State Council Resolution No. 1, dated 8th April 1925, (Notification No. 14-L/81).*]

An Act to provide for the preservation of Ancient Monuments and of objects of archæological, historical or artistic interest.

WHEREAS it is expedient to provide for the preservation of ancient monuments, for the exercise of control over traffic in antiquities and over excavation in certain places, and for the the protection and acquisition in certain cases of ancient monuments and of objects of archæological, historical or artistic interest; it is hereby enacted as follows:—

[1]**1.** Omitted.

2. In this Act, unless there is anything repugnant in the subject or context:—

Definitions.

(1) "Ancient monument" means any structure, erection or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription or monolith, which is of historical, archæological or artistic interest, or any remains thereof and includes—

(a) the site of an ancient monument;

(b) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument; and

(c) the means of access to and convenient inspection of an ancient monument:

(2) "Antiquities" include any moveable objects which the Government, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal or dispersion:

(3) Omitted.

(4) "maintain" and "maintenance" include the fencing, covering in, repairing, restoring and cleansing of a protected monument, and the doing of any act which may be necessary for the purpose of maintaining a protected monument or of securing convenient access thereto:

[1]**Short title, extent and commencement are given and regulated by Act IV of 1977.**

(5) "land" includes a revenue-free estate, a revenue paying estate, and a permanent transferable tenure whether such estate or tenure be subject to incumbrance, or not:

(5-*a*) "Minister" means the Minister-in-charge of the Archæological Department, and

(6) "Owner" includes a joint owener invested with powers of management on behalf of himself and other joint owners, and any manager or trustee exercising powers of management over an ancient monument, and the successor in title of any such owner and the successor in office of any such manager or trustee:

Provided that nothing in this Act shall be deemed to extend the powers which may lawfully be exercised by such manager or trustee.

Protected monuments.

3. (1) The [1][Government] may, by notification in the Government Gazette, declare an ancient monument to be a protected monument within the meaning of this Act.

(2) A copy of every notification published under sub-section (1) shall be fixed up in a conspicuous place on or near the monument, together with an intimation that any objections to the issue of the notification received by the [1][Government] within two months from the date when it is so fixed up will be taken into consideration.

(3) On the expiry of the said period of two months, the [1][Government] after considering the objections, if any, shall confirm or withdraw the notification.

(4) A notificatoin published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the monument to which it relates is an ancient monument within the meaning of this Act.

Acquisition of rights in or guardianship of an ancient monument.

4. (1) The Superintendent of Archæology, with the sanction of [2][the Government], may purchase or take a lease of any protected monument.

(2) The Superintendent of Archæology, with the like sanction, may accept a gift or bequest of any protected monument.

(3) The owner of any protected monument may, by written instrument, constitute the Minister the guardian of the monument, and the Minister may, with the sanction of [2][the Government] accept such guardianship.

[1]Substitnted for "Minister" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[2]In section 4, 5, 10, 15, 17, 18, 19, and 23 for the words "His Highness" the words "t he Government" substituted (for distinction put within brackets) *vide* Act X of 1996 pu blished in Government Gazette dated 15th Bhadon 1996.

(4) When the Minister has accepted the guardianship of a monument under sub-section (3), the owner shall, except as expressly provided in this Act, have the same estate, right, title and interest in and to the monument as if the Minister had not been constituted guardian thereof.

(5) When the Minister has accepted the guardianship of a monument under sub-section (3), the provisions of this Act relating to agreements executed under section 5 shall apply to the written instrument executed under the said sub-section.

(6) Where a protected monument is without an owner, the Minister may assume the guardianship of the monument.

Preservation of ancient monument by agreement

5. (1) The Superintendent of Archæology may, with the previous sanction of [1][the Government], propose to the owner to enter into an agreement with [1][the Government] for the preservation of any protected monument in his district.

(2) An agreement under this section may provide for the following matters, or for such of them as it may be found expedient to include in the agreement:—

(a) the maintenance of the monument;

(b) the custody of the monument, and the duties of any person who may be employed to watch it;

(c) the restriction of the owner's right to destroy, remove, alter or deface the monument or to build on or near the site of the monument;

(d) the facilities of access to be permitted to the public or to any portion of the public and to persons deputed by the owner or the Superintendent of Archæology to inspect or maintain the monument;

(e) the notice to be given to the Government in case the land on which the monument is situated is offered for sale by the owner, and the right to be reserved to the Government to purchase such land, or any specified portion of such land, at its market value;

(f) the payment of any expenses incurred by the owner or by the Government in connection with the preservation of the monument;

(g) the proprietary or other rights which are to vest in [1][the Government] in respect of the monument when any expenses are incurred by the Government in connection with the preservation of the monument;

(h) the appointment of an authority to decide any dispute arising out of the agreement; and

(i) any matter connected with the preservation of the

[1]See footnote under section 4.

monument which is a proper subject of agreement between the owner and the Government.

(3) An agreement under this section may be executed by the Superintendent of Archæology on behalf of [1][the Government], but shall not be so executed until it has been approved by [1][the Government].

(4) The terms of an agreement under this section may be altered from time to time with the sanction of [1][the Government] and with the consent of the owner.

(5) With the previous sanction of [1][the Government], the Superintendent of Archæology may terminate an agreement under this section on giving six months' notice in writing to the owner.

(6) The owner may terminate an agreement under this section on giving six months' notice to the Superintendent of Archæology.

(7) An agreement under this section shall be binding on any person claiming to be owner of the monument to which it relates, through or under a party by whom or on whose behalf the agreement was executed.

(8) Any rights acquired by Government in respect of expenses incurred in protecting or preserving a monument shall not be affected by the termination of an agreement under this section.

Owners under disability or not in possession.

6. (1) If the owner is unable, by reason of infancy or other disability, to act for himself, the person legally competent to act on his behalf may exercise the powers conferred upon an owner by section 5.

(2) In the case of village-property, the headman or other village-officer exercising powers of management over such property may exercise the powers conferred upon an owner by section 5.

(3) Nothing in this section shall be deemed to empower any person not being of the same religion as the persons on whose behalf he is acting to make or execute an agreement relating to a protected monument which or any part of which is periodically used for the religious worship or observances of that religion.

Enforcement of agreement.

7. (1) If the Superintendent of Archæology apprehends that the owner or occupier of a monument intends to destroy, remove, alter, deface, or imperil the monument or to build on or near the site thereof in contravention of the terms of an agree-

[1]See footnote under section 4.

ment for its preservation under section 5, the Governor on the motion of the Superintendent of Archæology may make an order prohibiting any such contravention of the agreement.

(2) If an owner or other person who is bound by an agreement for the preservation or maintenance of a monument under section 5 refuses to do any act which is in the opinion of the Superintendent of Archæology necessary to such preservation or maintenance, or neglects to do any such act within such reasonable time as may be fixed by the Superintendent of Archæology, the Superintendent of Archæology may authorise any person to do any such act, and the expense of doing any such act or such portion of the expense as the owner may be liable to pay under the agreement may be recovered from the owner as if it were an arrear of land revenue.

(3) A person aggrieved by an order made under this section may appeal to the Minister, who may cancel or modify it and whose decision shall be final.

Purchasers at certain sales and persons claiming through owner bound by instrument executed by owner.

8. Every person who purchases, at a sale for arrears of land revenue or any other public demand, an estate or tenure in which is situated a monument in respect of which any instrument has been executed by the owner for the time being, under section 4 or section 5, and every person claiming any title to a monument from, through or under an owner who executed any such instrument, shall be bound by such instrument.

Application of endowment to repair of an ancient monument.

9. (1) If any owner or other person competent to enter into an agreement under section 5 for the preservation of a protected monument, refuses or fails to enter into such an agreement when proposed to him by the Superintendent of Archæology, and if any endowment has been created for the purpose of keeping such monument in repair, or for that purpose among others, the Superintendent of Archæology may institute a suit in the Court of the District Judge, or, if the estimated cost of repairing the monument does not exceed one thousand rupees, may make an application to the District Judge for the proper application of such endowment or part thereof.

(2) On the hearing of an application under sub-section (1), the District Judge may summon and examine the owner and any person whose evidence appears to him necessary, and may pass an order for the proper application of the endowment or of any part thereof, and any such order may be executed as if it were the decree of a Civil Court.

10. (1) If [the Government] apprehends that a protected monument is in danger of being destroyed, injured or allowed to fall into decay, [1][the Government] may proceed to acquire it under the provisions of the Land Acquisition Act, as if the preservation of a protected monument were a "public purpose" within the meaning of that Act.

Compulsory purchase of ancient monument.

(2) The powers of compulsory purchase conferred by sub-section (1) shall not be exercised in the case of—

(a) any monument which or any part of which is periodically used for religious observances; or

(b) any monument which is the subject of a subsisting agreement executed under section 5.

(3) In any case other than the cases referred to in sub-section (2) the said powers of compulsory purchase shall not be exercised unless the owner or other person competent to enter into an agreement under section 5 has failed, within such reasonable period as the Superintendent of Archæology may fix in this behalf, to enter into an agreement proposed to him under the said section or has terminated or given notice of his intention to terminate such an agreement.

[2][**10-A.** (1) If the Government is of opinion that mining, quarrying, excavating, blasting and other operations of a like nature should be restricted or regulated for the purpose of protecting or preserving any ancient monument, the Government may, by notification in the Government Gazette, make rules:—

Power of Government to control mining etc., near ancient monuments.

(a) fixing the boundaries of the area to which the rules are to apply,

(b) forbidding the carrying on of mining, quarrying, excavating, blasting or any operation of a like nature except in accordance with the rules and with the terms of a licence, and,

(c) prescribing the authority by which and the terms on which licences may be granted to carry on any of the said operations.

(2) The power to make rules given by this section is subject to the condition of the rules being made after previous publication.

(3) A rule made under this section may provide that any person committing a breach thereof shall be punishable with fine which may extend to two hundred rupees.

(4) If any person or occupier of land included in a notification under sub-section (1) proves to the satisfaction of the

[1]See footnote under section 4.

[2]Section 10-A inserted *vide* Act 1 of 1996 published in Government Gazette dated 19th Sawan 1996.

Government that he has sustained loss by reason of such land being so included, the Government shall pay compensation in respect of such loss.]

Maintenance of certain protected monuments.

11. (1) The Minister shall maintain every monument in respect of which the Government has acquired any of the rights mentioned in section 4 or which the Government has acquired under section 10.

(2) When the Minister has accepted the guardianship of a monument under section 4, he shall, for the purpose of maintaining such monument, have access to the monument at all reasonable times, by himself or by his agents, subordinates and workmen, for the purpose of inspecting the monument, and for the purpose of bringing such materials and doing such acts as he may consider necessary or desirable for the maintenance thereof.

Voluntary contributions.

12. The Minister may receive voluntary contributions towards the cost of maintaining a protected monument and may give orders as to the management and application of any funds so received by him;

Provided that no contribution received under this section shall be applied to any purpose other than the purpose for which it was contributed.

Protection of place of worship from misuse, pollution or desecration.

13. (1) A place of worship or shrine maintained by the the Government under this Act shall not be used for any purpose inconsistent with its character.

(2) Where the Superintendent of Archæology has, under section 4, purchased or taken a lease of any protected monument, or has accepted a gift or bequest, or the Minister has, under the same section, accepted the guardianship thereof, and such monument, or any part therof is periodically used for religious worship or observances by any community, the Superintendent of Archæology in consultation with the Governor shall make due provision for the protection of such monument, or such part thereof from pollution or desecration—

(a) by prohibiting the entry therein, except in accordance with conditions prescribed with the concurrence of the persons in religious charge of the said monument or part thereof, of any person not entitled so to enter by the religious usages of the community by which the monument or part thereof is used, or

(b) by taking such other action as he may think necessary in this behalf.

Relinquishment of Government right in a monument.

14. [1][The Government] may—

(a) where rights have been acquired by Government in respect of any monument under this Act by virtue of any sale, lease, gift or will, relinquish the rights so acquired to the person who would for the time being be the owner of the monument if such rights had not been acquired; or

(b) relinquish any guardianship of a monument which it has accepted under this Act.

Right of access to certain protected monuments.

15. (1) Subject to such rules as may after previous publication be made by [2][the Government], the public shall have a right of access to any monument maintained by the Government under this Act.

(2) In making any rule under sub-section (1) [2][the Government] may provide that a breach of it shall be punishable with fine which may extend to twenty rupees.

Penalties.

16. Any person other than the owner who destroys, removes, injures, alters, defaces or imperils a protected monument, and any owner who destroys, removes, injures, alters, defaces or imperils a monument maintained by Government under this Act or in respect of which an agreement has been executed under section 5, and any owner or occupier who contravenes an order made under section 7, sub-section (1), shall be punishable with fine which may extend to five thousand rupees, or with imprisonment which may extend to three months, or with both.

TRAFFIC IN ANTIQUITIES.

Power of Government to control traffic in antiquities.

17. (1) If [2][the Government] apprehends that antiquities are being sold or removed to the detriment of the State or of any neighbouring country, he may, by notification in the Government Gazette, prohibit or restrict the bringing or taking of any antiquities or class of antiquities described in the notification into or out of the State or any specified part of the State.

(2) Any person who brings or takes or attempts to bring or take any such antiquities into or out of the State or any part of the State in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

[1]In Section 14 the words "The Government" substituted for the words "With the sanction of the His Highness, the Minister" *vide* Act X of 1996 published in the Government Gazette dated 15th Bhadon 1996.

[2]See footnote under section 4.

(3) Antiquities in respect of which an offence referred to in sub-section (2) has been committed shall be liable to confiscation.

(4) A Revenue Officer not lower in rank than a Naib-Tehsildar, an officer of Customs, or an officer of Police of a grade not lower than Assistant Inspector or Deputy Inspector, duly empowered by [1][the Government] in this behalf, may search any vessel, cart or other means of conveyance, and may open any baggage or package of goods, if he has reason to believe that goods in respect of which an offence has been committed under sub-section (2) are contained therein.

(5) A person who complains that the power of search mentioned in sub-section (4) has been vexatiously or improperly exercised may address his complaint to [2][the Government] and the [2][the Government] shall pass such order and may award such compensation, if any, as appears to it to be just.

PROTECTION OF SCULPTURES, CARVINGS, IMAGES, BAS-RELIEFS, INSCRIPTIONS OR LIKE OBJECTS.

Power of Government to control moving of sculptures, carvings or like objects.

18. (1) If [1][the Government] consider that any sculptures, carvings, images, bas-reliefs, inscriptions or other like objects ought not to be moved from the place where they are without the sanction of the Government, [1][the Government] may, by notification in the Government Gazette, direct that any such object or any class of such objects shall not be moved unless with the written permission of the Superintendent of Archæology.

(2) A person applying for the permission mentioned in sub-section (1) shall specify the object or objects which he proposes to move, and shall furnish, in regard to such object or objects, any information which the Superintendent of Archæology may require.

(3) If the Superintendent of Archæology refuses to grant such permission, the applicant may appeal to the Minister, whose decision shall be final.

(4) Any person who moves any object in contravention of a notification issued under sub-section (1), shall be punishable with fine which may extend to five hundred rupees.

(5) If the owner of any property proves to the satisfaction of [1][the Government] that he has suffered any loss or damage by reason of the inclusion of such property in a notification published under sub-section (1), [1][the Government]

[1]See footnote under section 4.

[2]In section 17(5) "Government" substituted for "Minister" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

shall either—

(a) exempt such property from the said notification;

(b) purchase such property, if it be moveable, at its market-value; or

(c) pay compensation for any loss or damage sustained by the owner of such property, if it be immoveable.

Purchase of sculptures, carvings of like object by the Government

19. (1) If [1][the Government] apprenend that any object mentioned in a notification issued under section 18, sub-section (1), is in danger of being destroyed, removed, injured or allowed to fall into decay, [1][the Government] may pass orders for the compulsory purchase of such object at its market-value, and the Superintendent of Archæology shall thereupon give notice to the owner of the object to be purchased.

(2) The power of compulsory purhase given by this section shall not extend to—

(a) any image or symbol actually used for the purpose of any religious observance; or

(b) anything which the owner desires to retain on any reasonable ground personal to himself or to any of his ancestors or to any member of his family.

ARCHAEOLOGICAL EXCAVATION.

Power of Government to notify areas as protected.

[2][**20.** (1) If the Government is of opinion that excavation for archæological purposes in any area should be restricted or regulated in the interest of archæological research, the Government may, by notification in the Government Gazette specifying the boundaries of the area, declare it to be a protected area.

(2) From the date of such notification all antiquities buried in the protected area shall be the property of Government and shall be deemed to be in the possession of Government, and shall remain the property and in the possession of the Government until ownership thereof is transferred; but in all other respects the rights of any owner or occupier of land in such area shall not be affected.

Power to enter upon and make excavation in a protected area.

20-A. (1) Any officer of the Archæological Department or any person holding a licence under section 20 B may, with the written permission of the Governor of the Province or in the case of Ladakh District, the Wazir of that District, enter upon and make excavations in any protected area.

[1]See footnote under section 4

[2]section 20 substituted and sections 20-A, 20-B and 20-C added *vide* Act 1 of 1996, published in Government Gazette dated 19th Sawan 1996.

(2) Where in the exercise of the power conferred by subsection (1) the rights of any person are infringed by the occupation or disturbance of the surface of any land, the Government shall pay to that person compensation for the infringement.

Power to Government to make rules regulating archæological excavation in prote ted areas.

20-B. (1) The Government may make rules:—

(a) prescribing the authorities by whom licences to excavate for archæological purposes in a protected area may be granted;

(b) regulating the conditions on which such licences may be granted, the form of such licences and the taking of security from licensees;

(c) prescribing the manner in which antiquities found by a licensee shall be divided between Government and the licensee; and

(d) generally to carry out the purposes of section 20.

(2) The power to make rules given by this section is subject to the condition of rules being made after previous publication.

(3) Such rules may be general for all protected areas for the time being, or may be special for any particular protected area or areas.

(4) Such rules shall provide that any person committing a breach of any such rule or any condition of a licence issued under this section shall be punishable with fine which may extend to one thousand rupees, and may further provide that where the breach has been by the agent or servant of a licensee the licensee himself shall be punishable.

Power to acquire a protected area

20-C. If the Government is of opinion that a protected area contains an ancient monument or antiquities of national interest, it may acquire such area, or any part thereof, under the State Land Acquisition Act No. 10 of 1990 as for a public purpose.]

GENERAL.

Assessment of market value or compensation.

21. The market-value of any property which Government is empowered to purchase at such value under this Act, or the [1][* *, compensation to be paid by Government in respect of anything done under this Act, shall, where any dispute arises [1][in respect] of such market-value or compen-

[1]In section 21 words "amount of" in third line omitted and words "in respect" substituted for "touching the amount" in sixth line *vide* Act 1 of 1996, published in Government Gazette dated 19th Sawan 1996.

sation, be ascertained in the manner provided by the Land Acquisition Act, so far as it can be made applicable:

Provided that when making an inquiry under the said Land Acquisition Act, the Collector shall be assisted by two assessors, one of whom shall be a competent person nominated by the Collector and one a person nominted by the owner or, in case the owner fails to nominate an assessor within such reasonable time as may be fixed by the Collector in this behalf, by the Superintendent of Archæology.

Jurisdiction.

22. A Magistrate of the third class shall not have jurisdiction to try any person charged with an offence against this Act.

Power to make rules.

23. [1][The Government] may make rules for carrying out any of the purposes of this Act.

Protection to public servants acting under Act.

24. No suit for compensation and no criminal proceeding shall lie against any public servant in respect of any act done, or in good faith intended to be done, in the exercise of any power conferred by this Act.

THE BANKERS' BOOK EVIDENCE ACT, 1977.

Act No. VI of 1977.

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[1]See footnote under section 4.

THE BANKERS' BOOK EVIDENCE ACT, 1977

Ac No. VI of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No 8372, dated 11th September 1920 and State Council Resolution No. I, dated 8th April 1925. (Notification No. 14-L/81).*]

An Act to amend the Law of Evidence with respect to Bankers' Books.

WHEREAS it is expedient to amend the Bankers' Books Evidence Act, it is hereby enacted as follows:—

[1]**1.** Omitted.

2. In this Act, unless there is something repugnant in the subject or context,— **Definitions.**

(1) "Company" means a company registered under any of the enactments relating to companies for the time being in force in the United Kingdom or in the State or in British India or incorporated by an Act of Parliament or of the Governor-General in Council or by Royal Charter or Letters Patent:

(2) "Bank" and "banker" mean—

(a) any company carrying on the business of bankers,

(b) any parternership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided:

(c) any Post Office Savings Bank or money-order office.

(3) "Bankers' books" include ledgers, day-books, cash-books, account-books and all other books used in the ordinary business of a bank:

(4) "Legal proceeding" means any proceeding or inquiry in which evidence is or may be given, and includes an arbitration:

(5) "The Court" means the person or persons before whom a legal proceeding is held or taken:

(6) "Judge" means a Judge of the High Court:

(7) "trial" means any hearing before the Court at which evidence is taken: and

(8) "Certified copy" means a copy of any entry in the books of a bank together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business,

[1]**Short title, extent and commencement** are given and regulated by Act IV of 1977.

and that such book is still in the custody of the bank, such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title.

Power to extend provisions of Act.

3. [1][The Government] may, from time to time, by notification in the Jammu and Kashmir Government Gazette, extend the provisions of this Act to the books of any partnership or individual carrying on the business of bankers within the territories under its administration, and keeping a set of not less than three ordinary account books, namely, a cash-book, a day-book or journal, and a ledger, and may in like manner rescind any such notification.

Mode of proof of entries in bankers' books.

4. Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

Case in which officer or bank not compellable to produce books.

5. No officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any banker's book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

Inspection of books by order of Court or Judge.

6. (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relavant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner herein before directed in reference to certified copies.

(2) An order under this or the preceding section may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

[1] In section 3 "The Government" substituted for "His Highness" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

Costs.

7. (1) The costs of any application to the Court or a Judge under or for the purposes of this Act and the costs of anything done or to be done under an order of the Court or a Judge made under or for the purposes of this Act shall be in the discretion of the Court or Judge, who may further order such costs or any part thereof to be paid to any party by the bank if they have been incurred in consequence of any fault or improper delay on the part of the bank.

(2) Any order made under this section for the payment of costs to or by a bank may be enforced as if the bank were a party to the proceeding.

(3) Any order under this section awarding costs may, on application to any Court of Civil Judicature designated in the order, be executed by such Court as if the order were a decree for money passed by itself:

Provided that nothing in this sub-section shall be construed to derogate from any power which the Court or Judge making the order may possess for the enforcement of its or his directions with respect to the payment of costs.

THE COURT-FEES ACT, 1977.

Act No. VII of 1977.

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THE COURT-FEES ACT, 1977.

Act No. VII of 1977.

[*Sanctioned by His Highness the Maharaja Sahaib Bahdur per chief Minister's endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1 dated 8th April 1925. Notification No. 14-L/81*)].

[1][CHAPTER I.

PRELIMINARY.]

Short title and extent

1. (i) This Act may be called the Court Fees Act No. VII of Samvat 1977.

(ii) It extends to the whole of the State of Jammu and Kashmir.

Chief Controlling Revenue Authority.

2. The Revenue Minister or a Minister for the time being in charge of the Revenue Administration of the State shall be the "Chief Controlling Revenue Authority" for the purposes of administration of court-fees laws.

Collector.

3. In this Act unless there is anything repugnant in the subject or context "Collector" shall mean the Governor of a Province provided that the Revenue Minister or the officer in charge of the Revenue Department for the time being with the previous sanction of the Council directs that all or any of the powers of the Collector exercisable by him under this Act shall be exercised by the the Wazir Wazarat or by any Wazir Wazarat of a particular locality.

[CHAPTER II.

FEES IN THE HIGH COURT.]

Fees in documents filed in High Court.

4. No document of any of the kinds specified in the First or Second Schedules to the Court-Fees Act No. 7 of 1977 annexed, as chargeable with fees shall be filed, exhibited or recorded in, or shall be received or furnished by the High Court in any case coming before it, in the exercise of its extraordinary original civil jurisdiction;

[1]Section 1-5 added by Act No. IX of 1994 published in Government Gazette dated 16th Baisakh 1995.

NOTE.—Words "chapter I—Preliminary" and "chapter II—Fees in High Court" are not given in the amending Act. These have been added by the Editor for consistency and facility of reference.

or in the exercise of its extraordinary original criminal jurisdiction;

or in the exercise of its ordinary original civil jurisdiction;

or in the exercise of its jurisdiction as regards appeal from the judgments passed under ordinary original civil jurisdiction of the High Court;

or in the exercise of its powers as a court of appeal from courts subject to its superintendence;

or in the exercise of its jurisdiction as a court of reference or revision;

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Procedure in case of difference as to necessity or amount of court-fee.

5. It shall be the duty of the Registrar of the High Court to see that proper fee is paid under this chapter. If any difference arises between the said officer and any suitor or counsel as to the necessity of paying a fee or the amount thereof the question shall be referred to the said Registrar and his decision shall be final. When, however, the question is in the opinion of the Registrar one of general importance he shall refer it for the final decision of the Chief Justice or such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.]

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

Fees on documents filed etc. in Mufassil Courts or in public offices.

6. No document of any of the kinds specified as chargeable in the first or second schedule to this Act annexed shall be filed, exhibited or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

Computation of fees payable in certain suits

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for money;

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance of annuities, or of other sums payable periodically)—according to the amount claimed:

for maintenance and annuities;

(ii) In suit for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and

such value shall be deemed to be ten times the amount claimed to be payable for one year:

for other moveable property having a market-value;

(iii) In suits for moveable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

(iv) In suits—

for moveable property of no market-value;

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property

(b) to enforce the right to share in any property on the ground that it is joint family property, (this does not apply to a suit for partition by metes and bounds),

for a declaratory decree and consequential relief;

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction;

(d) to obtain an injunction,

for easements;

(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts;

(f) for accounts—

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

for possession of lands, houses and gardens;

(v) In suits for the possession of land, houses and gardens—according to the value of the subject-matter; and such value shall be deemed to be—

where the subject-matter is land, and—

(a) Omitted,

(b) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid; eight times the revenue so payable,

(c) where the land pays no such revenue, or has been partially exempted from such payment, is a Jagir or a Dharmarth property or is charged with any fixed payment in lieu of such revenue,

and net profits have arisen from the land during the year next before the date of presenting the plaint—

fifteen times such net profit :

but where no such net profits have arisen therefrom—

the amount at which the Court shall estimate the land with reference to the value of similar land

in the neighbourhood;

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate and is not separately assessed the market-value of the land:

Explanation.—The word "estate", as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor or farmer or *raiyat* shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue:

for houses and gardens;

(e) where the subject-matter is a house or garden—

according to the market-value of the house or garden:

(vi) In suits to enforce a right of pre-emption—according to the value (computed in accordance with paragraph v of this section) of the land, house or garden in respect of which the right is claimed:

to enforce a right of pre-emption;

for interest of assignee of land revenue;

(vii) in suits for the interest of an assignee of land revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint:

In suits for *Haqi Lambardari maqaddami* or a similar right—eight times the income of the *Haq* or right,

to set aside an attachment;

(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest.

to redeem;

(ix) In suits against a mortgagee for the recovery of the property mortgaged,

to foreclose;

and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale,to have the sale declared aboslute—

according to the principal money expressed to be secured by the instrument of mortgage:

for specific performance;

(x) In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration:

(b) of a contract of mortgage—according to the amount agreed to be secured:

(c) of a contract of lease—according to the aggregate

amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(d) of an award—according to the amount or value of the property in dispute:

(xi) In the following suits between landlord and tenant:—

Between landlord and tenant;

(a) for the delivery by a tenant of the counter-part of a lease,

(b) to enhance the rent of a tenant having a right of occupancy,

(c) for the delivery by a landlord of a lease,

(cc) for the recovery of immoveable property from a tenant including a tenant holding over after the determination of a tenancy,

(d) to contest a notice of ejectment,

(e) to recover the occupancy of immoveable property from which tenant has been illegally ejected by the landlord, and

(f) for abatement of rent—

according to the amount of the rent of the immoveable property to which the suit refers, payable for the year next before the date of presenting the plaint.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on a memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed according to the difference between the amount awarded and the amount claimed by the appellant.

Power to ascertain net profits or market-value.

9. If the Court sees reason to think that the annual net profits or the market-value of any such land, house or garden as is mentioned in section 7, paragraphs 5 and 6, have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

Procedure where net profits or market-value wrongly estimated.

10. (i) If in the result of any such investigation the Court finds that the market-value has been wrongly estimated, the Court, if the estimation has been excessive, may in its discretion refund the excess paid as such

fee: but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or net profits been rightly estimated.

(ii) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

Procedure in suits for mesne profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne profits or for immovable property and mesne profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee acutally paid and the fee which would have been payable had the suit comprised the whole of the profits or amount so decreed shall have been paid to the proper officer.

Where the amount of mesne profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additonal fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

[1][Provided that, in suits under the Agriculturists Relief Act, 1983, the decree shall be executed to the extent of the amount of the instalments which have become due on payment of the additional court-fee, if any, which is found payable when calculated on the amount for which execution is sought].

Decision of questions as to valuation.

12. (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit.

(ii) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (ii), shall apply.

[1]Proviso to section 11 added by Act 11 of 1988 published in Government Gazette dated 4th Bhadon 1988.

13. If an appeal or plaint which has been rejected by the Lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in Order XLI Rule 23 of the same Code for a second decision by the Lower Court, the Appellate Court shall grant to the appellant a certificate, authorising him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Refund of fee paid on memorandum of appeal.

Provided that if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorise the appellant to receive back more than so much fee as would have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of the decree, the Court unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

Refund of fee on application for review of judgment.

15. Where an application for a review of judgment is admitted, and where, on the rehearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorising him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the second schedule to this Act No. I, clause (b) [1][or clause (d)].

Refund where Court reverses or modifies its former decision on ground of mistake.

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the orginal hearing.

16. Omitted.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in

Multifarious suits.

[1]Words "or clause (d)" at the end of section 15 first Para added by Act IX of 1994 published in Government Gazette dated 16th Baisakh 1995.

suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by the Code of Civil Procedure, Order II, Rule 6.

Written examination of complainants

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which the police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of [1][one rupee,] unless the Court thinks fit to remit such payment.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee:

(i) Power of attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer or private of His Highness' army not in civil employment.

(ii) Omitted.

(iii) Written statements called for by the Court after the first hearing of a suit.

(iv) Omitted.

[2](v) Omitted.

[2](vi) Omitted.

(vii) Omitted.

(viii) Probate of a will, letters of administration, where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

(ix) Application or petition to a Collector or other officer making a settlement of land revenue or to the Revenue Minister, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to the final confirmation of such settlement.

[2][(ix-a) Applications, appeals to the Income Tax Department in proceedings relating to assessment of Income Tax or objections thereto.]

(x) Application relating to a supply for irrigation of water belonging to Government.

[1]Substituted by Notification No. 12-L/86 published in Government Gazette dated 28th Magher 1986.

[2]Clauses (v) and (vi) deleted and clause (ix-a) added by Act IX of 1994 published in Government Gazette dated 16th Baisakh 1995.

(xi) Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding, under direct engagement with Government, land of which the revenue is settled, but not permanently.

(xii) Application for service of notice of relinquishment of land or of enhancement of rent.

(xiii) Written authority to an agent to distrain.

(xiv) First appliction (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend either to give evidence or to produce a document, or in respect of the production or filling of an exhibit not being an affidavit made for the immediate purpose of being produced in Court.

(xv) Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

(xvi) Petition, application, charge or information respecting any offence when presented, made or laid to or before a Police officer.

(xvi-a) Petition in a criminal case in which the Police may arrest without warrant.

(xvi-b) Copy to which article 9 of the first schedule of this Act applies furnished to an accused person in a warrant case.

(xvii) Petition by a prisoner, or other person in duress or under restraint of any Court or its officers.

(xviii) Complaint of a public servant (as defined in the [1]Ranbir Dand Bidhi) a Municipal officer, or of an official acting under Birds and Animals Game Protection Rules for breach of such rules.

(xix) Application for permission to cut timber in Government forests, or otherwise relating to such forests.

(xx) Application for the payment of money due by Government to the applicant.

(xxi) Omitted.

(xxii) Application for compensation under any law for the time being in force relating to the acquisition of property for public purposes.

(xxiii) Omitted.

CHAPTER III-A.

PROBATES, LETTERS OF ADMINISTRATION AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19-A. Where any person on applying for the probate of a will or letters of administration has estimated the property of the deceased to be

[1]Ranbir Penal Code.

of greater value than the same has afterwards proved to be, and has consequently paid too high a court-fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Revenue Minister,

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidativ or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(a) cancel the stamp on the probate or letter if such stamp has not been already cancelled;

(b) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(c) make an allowance for the difference between them as in the case of spoiled stamps, or repay the same in money, at his discretion.

19-B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as, being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act.

Relief where debt due from a deceased person have been paid out of his estate.

Such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceedings, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

19-C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Relief in case of several grant.

Whenever such a grant has been or is made in respect of any property forming part of an estate, the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Probates declared valid as to trust-property though not covered by court-fee

19-D. The probate of the will or the letters of administration of the effects of any person deceased heretofore or hereafter granted shall be deemed valid and availale by his executors or administrators for recovering, transferring or assigning any movable or immovable property whereof or whereto the deceased was possessed or entitled, either wholly or partially as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

Provision for case where too low a court-fee has been paid on probate, etc

19-E. Where any person on applying for probate or letters of administration has estimated the estate of the deceased to be of less value than the same has afterwards proved to be and has in consequence paid too low a court-fee thereon, the Revenue Minister may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of administration to be duly stamped on payment of the full court-fee which ought to have been originally paid thereon in respect of such value and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or if it or they is or are produced after one year from such date of twenty times, such proper court-fee, without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

Administrator to give proper security before letters stamped under section 19-E.

19-F. In case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid until

the administrator has given such security to the Court by which the letters of administration have been granted as ought by law to have been given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, etc., not paying full court-fee on probates, etc., within six months after discovery of under-payment.

19-G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not within six months after the discovery of the mistake or of any effect not known at the time to have belonged to the deceased, apply to the said Authority and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

Notice of applications for probate or letters of administration to be given to Revenue-authorities, and procedure thereon.

19-H. (1) Where an application for probate or letters of administration is made to any Court other than the High Court, the Court shall cause notice of the application to be given to the Collector.

(2) Where such an appliction as aforesaid is made to the High Court, the High Court shall cause notice of the application to be given to the Revenue Minister.

(3) The Collector within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take or cause to be taken copies of, the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent) and take evidence and inquire into the matter in such manner as he may think fit, and, if he is still of opinion hat the value of the property has been under estimated, maytrequire the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the Court before which the application for probate or letters of administration was made, to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the

expiration of six months from the date of the exhibition of the inventory required by section 98 of the Probate and Administration Act.

(5) The Court when so moved as aforesaid, shall hold, or cause to be held an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the Court or person authorised by the Court to hold the inquiry may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorised as aforesaid to hold the inquiry shall return to the Court the evidence taken by him and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the Court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the Court recorded under sub-section (5) shall be final, but shall not bar the entertainment and disposal by the Revenue Minister of any application under section 19-E.

(8) [1][The Government] may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

Payment of court-fees in respect of probates and letters of administration.

19-I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the Court a valuation of the property in the form set forth in the third schedule, and the Court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the Collector under section 19-H, sub-section (4).

Recovery of penalties, etc.

19-J. (1) Any excess fee found to be payble on an inquiry held under section 19-H, sub-section (6), and any penalty or forfeiture under section 19-G may, on the certificate of the Revenue Minister be recovered from the executor or administrator as if it were an arrear of land revenue by any Collector in any part of the State.

[1]In sections 19-H (8), 20, 22, 23, 26, 27, 34 and 35 the words "the Government" substituted for "His Highness" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

(2) The Revenue Minister may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19-E or of any court-fee under section 19-E, in excess of the full court-fee which ought to have been paid.

Sections 6 and 28 not to apply to probates or letters of administration.

19-K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

CHAPTER IV.

PROCESS-FEES.

20. The High Court shall, as soon as may be, make rules as to the following matters:—

Rules as to costs of processes.

(i) the fees chargeable for serving and executing processes issued by such Court in its appellate jurisdiction, and by the other Civil Courts established within the local limits of such jurisdiction;

(ii) the fees chargeable for serving and executing processes issued by the Criminal Court established within such limits in the case of offences other than offences for which Police officers may arrest without a warrant; and

(iii) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may from time to time alter and add to the rules so made.

All such rules, alterations and additions shall, after being confirmed by [1][the Government] be published in the Government Gazette, and shall thereupon have the force of law.

Confirmation and publication of rules.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Tables of process-fees.

22. Subject to rules to be made by the High Court and approved by [1][the Government],

Number of peons in District and subordinate Courts.

[1]See footnote under section 19-H.

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto,

and for the purposes of this section, every Court of Small Causes shall be deemed to be subordinate to the Court of the District Judge.

Number of peons in Small Cause Court.

23. Subject to rules to be framed by the Revenue Minister and approved by [1][the Government] every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him.

Number of peons in Revenue Courts.

24. Omitted.

CHAPTER V.

OF THE MODE OF LEVYING FEES.

25. All fees referred to in section 3 or chargeable under this Act shall be collected by stamps.

Collection of fees by stamps.

26. The stamps used to denote any fees chargeable under this Act shall be impressed or adhesive or partly impressed and partly adhesive, as [1][the Government] may, by notification in the Government Gazette, from time to time direct.

Stamps to be impressed or adhesive.

27. [1][The Government] may, from time to time, make rules for regulating—

Rules for supply, number, renewal and keeping accounts of stamp

(a) the supply of stamps to be used under this Act,

(b) the number of stamps to be used for denoting any fee chargeable under this Act,

(c) the renewal of damaged or spoiled stamps, and

(d) the keeping accounts of all stamps used under this Act.

All such rules shall be published in the Government Gazette, and shall thereupon have the force of law.

28. No document which ought to bear a stamp under this Act shall be of any validity, unless and until it is properly stamped.

Stamping document inadvertently received.

But, if any such document is through mistake or inadvertence received, filed or used in any Court or office without

[1]See footnote under section 19-H.

being properly stamped, the presiding Judge or the head of the the office, as the case may be, or, in the case of the High Court, Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

Amended document.

29. Where any such document is amended in order merely to correct a mistake and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

Cancellation of stamps.

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any Court or office until the stamp has been cancelled.

Such officer as the Court or the head of the office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched and the part removed by punching shall be burnt or otherwise destroyed.

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to Criminal Courts.

31. (i) Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which Police officers may arrest without warrant, is presented to a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, paid on such application or petition.

(ii) In the case mentioned in section 18, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

(iii) When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

(iv) All-fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

32. Omitted.

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in section 6 shall be deemed to prohibit such filing or exhibition.

Admission in criminal cases of documents for which proper fee has not been paid.

34. (1) [1][The Government] may from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons.

Sale of stamps.

(2) All such rules shall be published in the Government Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

35. [1][The Government] may, from time to time by notification in the Government Gazette reduce or remit in the whole or in any part of the State, all or any of the fees mentioned in the first and second schedules to this Act annexed,

Power to reduce or remit fees.

and may in like manner cancel or vary such order.

[2]The enactments mentioned in the schedule given below are repealed to the extent specified therein

SCHEDULE.

Number and year.	Title.	Extent of Repeal.
Council Resolution No. 11 of 1901.	Dharmarth Department.	The whole.
Council Resolution No. 8 of 1902.	Exemption from payment of Court and Process Fee and Stamp duty.	
Resolution No. 31 of 1892.	Exemption from payment of court-fee and Stamp duty in case of Municipalities.	The whole.

[1]See footnote under section 19-H.

[2]Enactments mentioned in the Schedule below were repealed by Act IX of 1994 published in the Government Gazette dated 16th Baisakh 1905.

SCHEDULE 1.

Ad valorem fees.

Number.		Proper fee.
[1]1. Plaint—	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, but does not exceed five hundred rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas.
Written statement pleading a set-off or counter-claim or memrandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court.	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees.	Seven rupees eight annas.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees up to ten thousand rupees.	Fifteen rupees.

[1]Article 1 substituted by Notification No. 12-L/86 published in Government Gazette dated 28th Magher 1986.

SCHEDULE I—*contd.*

Ad valorem fees—contd.

Number.		Proper fee.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees up to twenty thousand rupees.	Twenty-two rupees eight annas.
	When such amount or value exceeds two thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees.	Thirty rupees.
	When such amount of value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees up to fifty thousand rupees.	Thitry rupees.
	When such amount or value exceeds fifty thousand rupees for every five thousand rupees or part thereof in excess of fifty thousand rupees.	Thirty rupees.
2. Plaint in a suit for possession under (the Specific Relief Act, section 9). 3. Omitted.	.. ..	A fee of one half the amount prescribed in the foregoing scale.
4. Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.	.. ..	The fee leviable on the plaint or memorendum of appeal.

SCHEDULE. I—*contd.*

Ad valorem fees—contd.

Number.		Proper fee.
5. Application for review of judgment, if presented before he ninetieth day from the date of the decree.	.. ...	One-half of the fee leviable on the plaint or memorandum of appeal.
6. Copy or translation of a judgment or order not being, or having the force of, a decree.	(*a*)—If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas.
	(*b*)—If such amount or value exceeds fifty rupees.	Eight annas.
7. Copy of a decree or order having the force of a decree.	(*a*)—If the amount or value of the subject-matter of the suit where in such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(*b*)—If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by the High Court.	Four rupees.
8. Copy of any document liable to stamp duty under the State Stamp Act, when left by any party to a suit or proceeding in place of the original withdrawn.	(*a*)—When the stamp duty chargeable on the original does not exceed eight annas.	The amount of the duty chargeable on the original.
	(*b*)—If any other case.	Eight annas.
9. Copy of any revenue or judicial proceeding or order not other-		[1]Twelve annas.

[1]Substitued by Regulation XXI of 1889 Notification No. 89-L/89 published in the Government Gazette dated 8th Poh 1989 for "eight annas".

SCHEDULE I—*contd.*

Ad valorem fees—contd

Number.		Proper fee.
wise provided for by this Act, or copy of any account, statement, report or the like, taken out of any Civil or Criminal or Revenue Court or Office.		
10. Omitted.		
11. Probate of a will or letters of administration with or without will annexed.	If the amount or value of the property in respect of which the grant of probate or letter is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per cent. on such amount or value.
	When such amount or value exceeds ten thousand rupees but does not exceed fifty thousand rupees.	Two and one-half per cent. on such amount or value.
	When such amount or value exceeds fifty thousand rupees.	Three per cent. on such amount or value.
	Provided that when after the grant of a Certificate under the Succession Certificate Act in respect of any property included in an estate, a grant of probate or letters of administration is made in repect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	
12. Certificate under the Succession Certificate Act.	In any case.	Two per centum on the amount or value of any debt or security speci-

SCHEDULE 1—*concld.*

Ad valorem fees—concld.

Number.		Proper fee.
		fied in the certificate under section 8 of the Act and three per centum of any amount or value on the debt or security to which the certificate is extended under section 10 of the Act. NOTE.—The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.
13. Application to the High Court for revisional juridiction under section 115 of the Code of Civil Procedure.	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees.	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.
[1]13-A. Application under the Agriculturists Relief Act to the High Court for revisional jurisdiction under section 115 of the Civil Procedure Code.	In all cases.	Two rupees.
14. Omitted.		
15. Omitted.		

[1]Added by Notification No. 10-L/86 published in Government Gazette dated 21st Magher 1986

SCHEDULE 1.

[1]*Table of rates of ad valorem fees leviable on the institution of suits.*

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
..	5	0 6 0	95	100	7 8 0
5	10	0 12 0	100	110	8 4 0
10	15	1 2 0	110	120	9 0 0
15	20	1 8 0	120	130	9 12 0
20	25	1 14 0	130	140	10 8 0
25	30	2 4 0	140	150	11 4 0
30	35	2 10 0	150	160	12 0 0
35	40	3 0 0	160	170	12 12 0
40	45	3 6 0	170	180	13 8 0
45	50	3 12 0	180	190	14 4 0
50	55	4 2 0	190	200	15 0 0
55	60	4 8 0	200	210	15 12 0
60	65	4 14 0	210	220	16 8 0
65	70	5 4 0	220	230	17 4 0
70	75	5 10 0	230	240	18 0 0
75	80	6 0 0	240	250	18 12 0
80	85	6 6 0	250	260	19 8 0
85	90	6 12 0	260	270	20 4 0
90	95	7 2 0	270	280	21 0 0

[1]Table of rates of *ad valorem* fees substituted by Notification No. 12L/86 published in Government Gazette dated 28th Magher, 1986.

SCHEDULE I—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
280	290	21 12 0	470	480	36 0 0
290	300	22 8 0	480	490	36 12 0
300	310	23 4 0	490	500	37 8 0
310	320	24 0 0	500	510	57 6 0
320	330	24 12 0	510	520	58 8 0
330	340	25 8 0	520	530	59 10 0
340	350	26 4 0	530	540	60 12 0
350	360	27 0 0	540	550	61 14 0
360	370	27 12 0	550	560	63 0 0
370	380	28 8 0	560	570	64 2 0
380	390	29 4 0	570	580	65 4 0
390	400	30 0 0	580	590	66 6 0
400	410	30 12 0	590	600	67 8 0
410	420	31 8 0	600	610	68 10 0
420	430	32 4 0	610	620	69 12 0
430	440	33 0 0	620	630	70 14 0
440	450	33 12 0	630	640	72 0 0
450	460	34 8 0	640	650	73 2 0
460	470	35 4 0	650	660	74 4 0

SCHEDULE I—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
660	670	75 6 0	850	860	96 12 0
670	680	76 8 0	860	870	97 14 0
680	690	77 10 0	870	880	99 0 0
690	700	78 12 0	880	890	100 2 0
700	710	79 14 0	890	900	101 4 0
710	720	81 0 0	900	910	102 6 0
720	730	82 2 0	910	920	103 8 0
730	740	33 4 0	920	930	104 10 0
740	750	84 6 0	930	940	105 12 0
750	760	85 8 0	940	950	106 14 0
760	770	86 10 0	950	960	108 0 0
770	780	87 12 0	960	970	109 2 0
780	790	88 14 0	970	980	110 4 0
790	800	90 0 0	980	990	111 6 0
800	810	91 2 0	990	1,000	112 8 0
810	820	92 4 0	1,000	1,100	120 0 0
820	830	93 6 0	1,100	1,200	127 8 0
830	840	94 8 0	1,200	1,300	135 0 0
840	850	95 10 0	1,300	1,400	142 8 0

SCHEDULE I.—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
1,400	1,500	150 0 0	3,300	3,400	292 8 0
1,500	1,600	157 8 0	3,400	3,500	300 0 0
1,600	1,700	165 0 0	3,500	3,600	307 8 0
1,700	1,800	172 8 0	3,600	3,700	315 0 0
1,800	1,900	180 0 0	3,700	3,800	322 8 0
1,900	2,000	187 8 0	3,800	3,900	330 0 0
2,000	2,100	195 0 0	3,900	4,000	337 8 0
2,100	2,200	202 8 0	4,000	4,100	345 0 0
2,200	2,300	210 0 0	4,100	4,200	352 8 0
2,300	2,400	217 8 0	4,200	4,300	360 0 0
2,400	2,500	225 0 0	4,300	4,400	367 8 0
2,500	2,600	232 8 0	4,400	4,500	375 0 0
2,600	2,700	240 0 0	4,500	4,600	382 8 0
2,700	2,800	247 0 0	4,600	4,700	390 0 0
2,800	2,900	255 0 0	4,700	4,800	397 8 0
2,900	3,000	262 8 0	4,800	4,900	405 0 0
3,000	3,100	270 0 0	4,900	5,000	412 8 0
3,100	3,200	277 8 0	5,000	5,250	427 8 0
3,200	3,300	285 0 0	5,250	5,500	442 8 0

SCHEDULE I.—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
5,500	5,750	457 8 0	10,500	11,000	757 8 0
5,750	6,000	472 8 0	11,000	11,500	780 0 0
6,000	6,250	487 8 0	11,500	12,000	802 8 0
6,250	6,500	502 8 0	12,000	12,500	825 0 0
6,500	6,750	517 8 0	12,500	13,000	847 8 0
6,750	7,000	532 8 0	13,000	13,500	870 0 0
7,000	7,250	547 8 0	13,500	14,000	892 8 0
7,250	7,500	562 8 0	14,000	14,500	915 0 0
7,500	7,750	577 8 0	14,500	15,000	937 8 0
7,750	8,000	592 8 0	15,000	15,500	960 0 0
8,000	8,250	607 8 0	15,500	16,000	982 8 0
8,250	8,500	622 8 0	16,000	16,500	1,005 0 0
8,500	8,750	637 8 0	16,500	17,000	1,027 8 0
8,750	9,000	652 8 0	17,000	17,500	1,050 0 0
9,000	9,250	667 8 0	17,500	18,000	1,072 8 0
9,250	9,500	682 8 0	18,000	18,500	1,095 0 0
9,500	9,750	697 8 0	18,500	19,000	1,117 8 0
9,750	10,000	712 8 0	19,000	19,500	1,140 0 0
10,000	10,500	735 0 0	19,500	20,000	1,162 8 0

SCHEDULE I.—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
20,000	21,000	1,192 8 0	48,000	50,000	1,762 8 0
21,000	22,000	1,222 8 0	50,000	55,000	1,792 8 0
22,000	23,000	1,252 8 0	55,000	60,000	1,822 8 0
23,000	24,000	1,282 8 0	60,000	65,000	1,852 8 0
24,000	25,000	1,312 8 0	65,000	70,000	1,882 8 0
25,000	26,000	1,342 8 0	70,000	75,000	1,912 8 0
26,000	27,000	1,372 8 0	75,000	80,000	1,942 8 0
27,000	28,000	1,402 8 0	80,000	85,000	1,972 8 0
28,000	29,000	1,432 8 0	85,000	90,000	2,002 8 0
29,000	30,000	1,462 8 0	90,000	95,000	9,032 8 0
30,003	32,000	1,492 8 0	95,000	1,00,000	2,062 8 0
32,000	34,000	1,522 8 0	1,00,000	1,05,000	2,092 8 0
34,000	36,000	1,552 8 0	1,05,000	1,10,000	2,122 8 0
36,000	38,000	1,582 8 0	1,10,000	1,15,000	2,152 8 0
38,000	40,000	1,612 8 0	1,15,000	1,20,000	2,182 8 0
40,000	42,000	1,642 8 0	1,20,000	1,25,000	2,212 8 0
42,000	44,000	1,672 8 0	1,25,000	1,30,000	2,242 8 0
44,000	46,000	1,702 8 0	1,30,000	1,35,000	2,272 8 0
46,000	48,000	1,732 8 0	1,35,000	1,40,000	2,302 8 0

SCHEDULE I.—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
1,40,000	1,45,000	2,332 8 0	2,35,000	2,40,000	2,902 8 0
1,45,000	1,50,000	2,362 8 0	2,40,000	2,45,000	2,932 8 0
1,50,000	1,55,000	2,392 8 0	2,45,000	2,50,000	2,962 8 0
1,55,000	1,60,000	2,422 8 0	2,50,000	2,55,000	2,992 8 0
1,60,000	1,65,000	2,452 8 0	2,55,000	2,60,000	3,022 8 0
1,65,000	1,70,000	2,482 8 0	2,60,000	2,65,000	3,052 8 0
1,70,000	1,75,000	2,512 8 0	2,65,000	2,70,000	3,082 8 0
1,75,000	1,80,000	2,542 8 0	2,70,000	2,75,000	3,112 8 0
1,80,000	1,85,000	2,572 8 0	2,75,000	2,80,000	3,142 8 0
1,85,000	1,90,000	2,602 8 0	2,80,000	2,85,000	3,172 8 0
1,90,000	1,95,000	2,632 8 0	2,85,000	2,90,000	3,202 8 0
1,95,000	2,00,000	2,662 8 0	2,90,000	2,95,000	3,232 8 0
2,00,000	2,05,000	2,692 8 0	2,95,000	3,00,000	3,262 8 0
2,05,000	2,10,000	2,722 8 0	3,00,000	3,05,000	3,292 8 0
2,10,000	2,15,000	2,752 8 0	3,05 000	3,10,000	3 322 8 0
2,15,000	2,20,000	2,782 8 0	3,10,000	3,15,000	3,352 8 0
2,20,000	2,25,000	2,812 8 0	3,15,000	3,20,000	3,382 8 0
2,25,000	2,30,000	2,842 8 0	3,20,000	3,25,000	3,412 8 0
2,30,000	2,35,000	2,872 8 0	3,25,000	3,30,000	3,442 8 0

SCHEDULE I.—*contd.*

Ad valorem fees.—contd.

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.
Rs.	Rs.	Rs. A. P.	Rs.	Rs.	Rs. A. P.
3,30,000	7,35,000	3,472 8 0	3,65,000	3,70,000	3,682 8 0
3,35,000	3,40,000	3,502 8 0	3,70,000	3,75,000	3,712 8 0
3,40,000	3,45,000	3,532 8 0	3,75,000	3,80,000	3,742 8 0
3,45,000	3,50,000	3,562 8 0	3,80,000	3,85,000	3,772 8 0
3,50,000	3,55,000	3,592 8 0	3,85,000	3,90,000	3,802 8 0
3,55,000	3,60,000	3,622 8 0	3,90,000	3,95,000	3,832 8 0
3,60,000	3,65,000	3,652 8 0	3,95,000	4,00,000	3,862 8 0

And when the amount or value of the subject-matter exceeds Rs. 4,00,000 the proper fee leviable shall be Rs. 3,862 annas eight plus Rs. 30 for each five thousand rupees or part thereof in excess of Rs. 4,00,000.

SCHEDULE II.

Fixed Fees.

Number.		Proper fee.
1. Application or peti-tion.	(*a*).—When presented to [1][any Sub-Registrar or] any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings; or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement ; or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement ; or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any	[2][Two annas.]

[1]Added by Act VIII of 1990 published in Government Gazette dated 11th Phagan 1990.

[2]Substituted by Notification No. 12L-86 published in Government Gazette dated 28th Magher 1986.

SCHEDULE II.—*contd.*

Fixed Fees.—contd.

Number.		Proper fee.
1. Application or petition.—*contd.*	Court of Small Causes or to a Collector or other officers of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	[1][Two annas.]
	or when presented to any Civil, Criminal or Revenue Court, [2][or Registration office]for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, or of any other document on record in such Court or Office.	
	(*b*).—When containing a complaint or charge of any offence other than an offence for which Police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court;	[1][One rupee].
	or when presented to a Civil, Criminal or Revenue Court [2][or to a Registrar under the Registration Act] or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any	

[1]Substituted by Notification No. 12-L/86 published in the Government Gazette dated 28th Magher 1996.

[2]Added by Act VIII of 1990 published in the Government Gazette dated 11th Phagan 1990.

SCHEDULE II.—*contd.*

Fixed Fees.— contd.

Number.		Proper fee.
1. Application or petition.—*contd.*	Magistrate or the head of any Department other than a Minister in his executive capacity, and not otherwise provided for by this Act. or to deposit in court revenue or rent; or for determination by a court of the amount of compensation to be paid by landlord to his tenant.	
	(*c*).—When presented to a Minister in his executive capacity and not otherwise provided for by this Act.	Two rupees.
	[1][(*d*).—When presented to the High Court—	
	(*i*) Under the Companies Act, 1977, for winding up a Company.	One hundred rupees.
	(*ii*) Under the same Act for taking some other Judicial action.	Five rupees.
	(*iii*) In all other cases not otherwise provided for by this Act.	Two rupees.]
	[(*e*).—When presented or addressed to His Highness and not otherwise provided for by this Act.	Two rupees.]

[1]Clause (d) (as amended *vide* Notification No. 2, dated 21st July, 1921) substituted *vide* Notification No. 12.L/86 published in the Government Gazette dated 28th Magher 1986. Clause (e) also added by the same Notification.

SCHEDULE II.—*contd.*

Fixed fees—contd.

Number.		Proper fee.
[1][*Exemptions.*—		
1. Petitions from widows, orphans and Military Pensioners when submitted to His Highness the Maharaja Bahadur to Council or Ministers.		
2. Applications for employment in Government service when sent in response to Government advertisements.		
3. Petitions from pensioners with regard to their pensions.		
4. Applications by Civil and Military officers regarding questions arising out of the service such as applications for grant of increment, transfer, leave etc.		
5. Applications for scholarships.		
6. Applications for grant-in-aid to schools, Maktabs and Pathshalas.		
7. Applications for grant of loans from Provident Fund or for house building or purchase of motor-car.		
8. Petitions from widows and orphans for grant of compassionate allowance.		
9. Applications for enquiries received from contractors and licensees arising out of the operation of such contracts and licenses but not applications for any concessions or remissions.		

[1] Exemptions 1—11 added *vide* Notification No. 8-L/1991 published in the Government Gazette dated 23rd Katik 1991.

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.		Proper fee.
10. Applications from the public or public bodies for repairs to drains, roads, ghats, bathing places or stand pipes or for provision of light and water whether in towns or in rural areas.		
11. Applications from Muafidars or Mukarraridars for payment or settlement of their pending claims.]		
[1][*12.* Applications for registration of arms.]		
1-A. Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission involves the use of post.	Twelve annas, in addition to any fee leviable on the application under clauses (a) and (b) of Art. I to this schedule.
2. Application for leave to sue as a pauper.	.....	Eight annas.
3. Application for leave to appeal as pauper.	(*a*)—When presented to a Lower Court.	One rupee.
	(*b*)—When presented to a District court or the High Court or the Revenue Minister.	Two rupees.
	(*c*)—When presented to His Highness the Maharaja Bahadur.	Three rupees.
4. Omitted.		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.	.....	[2][One rupee].

[1]Exemption 12] added *vide* Notification No. 6-L/1992 Council Order No. 72 of 1936 published in the Government Gazette dated 30th Phagan 1992.

[2]Substituted *vide* Notification No. 12-L/86 published in the Government Gazette dated 28th Magher 1986.

SCHEDULE II—*contd.*

Fixed Fees—contd.

Number.		Proper fee.
6. Bail-bond or other instrument of obligation given in the absence of any other provision in this Act.	.....	[1][One rupee].
7. Omitted.		
8. Omitted.		
9. Omitted.		
10. Mukhtarnama or Wakalatnama [2][or any paper signed by an Advocate signifying or intimating that he is retained for a party].	When presented for the conduct of any one case—	
	(*a*)—to His Highness the Maharaja Bahadur, the High Court or a Minister.	Two rupees.
	(*b*)—to the District or Sessions Court or the Governor.	One rupee.
	(*c*)—to any other Civil, Criminal or Revenue Court of Revenue Office.	[3][One rupee].
11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree, and is presented—	(*a*)—to H. H. the Maharaja Bahadur or the High Court, or a Minister.	[3][Four rupees.]
	(*b*)—to the District or Sessions Court or to the Governor.	One rupee.
	(*c*)—to any other Civil or Revenue Court or Revenue Office.	[3][One rupee.]
12. Omitted.		

[1]Substituted *vide* Act XXI of 1989—Notification No. 39-L/89 published in Government Gazette dated 8th Poh 1989 for "eight annas" in Article 6.

[2]In Article 10 words in brackets added *vide* Act XXI of 1989.

[3]Substituted by Notification No. 12-L/86 published in Government Gazette dated 28th Magher 1986.

SCHEDULE II.—*contd.*

Fixed fees.—contd.

Number.		Proper fee.
13. Omitted.		
14. Omitted.		
15. Omitted.		
16. Cmitted.		
17. Plaint or memorandum of appeal in each of the following suits:—		
i. (*a*) to alter or set aside a summary decision or order of a Civil Court.	.....	Ten rupees.
(*b*) To alter or set aside a summary decision or order of a Revenue Court, not otherwise provided for.	.....	[1][Two rupees.]
ii. to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;	.....	Ten rupees.
iii. to obtain a declatory decree where no consequential relief is prayed;		
iv. to set aside an award.		
v. to set aside an adoption.		
vi. every other suit where it is not possible to estimate at a money-		

[1]Substituted by Act XXI of 1989—Notification No. 39-L/89 published in Government Gazette dated 8th Pob 1989 for "eight annas" in Article 17 (I) (b).

SCHEDULE II.—*concld.*

Fixed fees.—concld.

Number.		Proper fee.
value the subject-matter in dispute, and which is not otherwise provided for by this Act.	.....	Ten rupees.
vii. an appeal from a preliminary decree passed under rules 13, 15, 16 or 18 (*b*) of order XX of the Code of Civil Procedure.		
18. Application under Schedule II Para. 17, of the Code of Civil procedure.	.....	Ten rupees.
19. Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908.		
20. Omitted.		
21. Plaint or memorandum of appeal in a suit for restitution of conjugal rights or custody of a wife.	.....	Five rupees.
[1]22. Plaint or memorandum of appeal in a suit by a reversioner under the Customary Law for a declaration in respect of an alienation of ancestral land.	.....	Twenty rupees.

[1]Article 22 added *vide* Notification No. 12-L/86 published in Government Gazette dated 28th Magher 1986.

SCHEDULE III.

(See section 191.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

Reprobate of the Will of , (*or admission of*
the property and credits of ,) *deceased.*

I {Solemnly affirm / make oath.}

and say that I am the executor (or one of the executors or one of the next kin) of , deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interest, dividends and increased values since the date of the death of the said deceased, are under the value of

ANNEXURE A.

VALUATION OF THE MOVEABLE ATD IMMOVEABLE PROPETY OF , DECEASED.

	R.	A.	p.
Cash in the house and at the banks, house-hold goods, wearing-apparel, books, plate, jewels, etc.			
(*State estimated value according to best of Executor's or Administrator's belief*)			
Property in Government securities transferable at the Public Debt Office.			
(*State description and value at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Immoveable property consisting of			
(*State description giving, in the case of houses, the assessed value, if any, and the number of years, assessment, the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.*)			
Leasehold property * * * *			
(*If the deceased held any leases for years determinable, state the number of years' purchase the profit rents are estimated to be worth and the value of such, inserting separately arrears due at the date of death and all rents received or due since that date to the time of making the application.*)			

	Rs.	A.	P.
Property in public companies,			
(*State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.*)			
Policy of insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes and other securities for money.			
(*State the amount of the whole; also the interest separately, calculating it to the time of making the application.*)			
Book debts ...			
(*Other than bad*) ...			
Stock in trade ...			
(*State the estimated value, if any.*) ...			
(Other property not comprised under the foregoing heads ...			
(*State the estimated value, if any.*) ...			
Total ..			
Deduct amount shown in Annexure B not subject to duty ..			
NET TOTAL ...			

ANNEXURE B.

SCHEDULE OF DEBTS, ETC.

	Rs.	A.	P.
Amount of debts due and owing from the deceased, payable by law out of the estate ...			
Amount of funeral expenses ...			
Amout of mortgage incumbrances ...			
Property held in trust not beneficially or with general power to confer a beneficial interest ...			
Other property not subject to duty ...			
Total ...			

THE CATTLE-TRESPASS ACT, 1977

Act No. VIII of 1977.

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THE CATTLE-TRESPASS ACT, 1977.

Act VIII of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 1 th September, 1920, and State Council Resolution No. 1, dated 8th April, 1925. (Notification No. 14-L/81).*]

An Act to consolidate and amend the Law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the the Law relating to trespasses by cattle; It is hereby enacted as follows:—

Preamble

CHAPTER I.

PRELIMINARY.

[1]**1.** (1) Omitted.

(2) The Act extends to the whole State, except such towns or local areas as [2][His Highness' Government, Jammu and Kashmir], by notification in the Jammu and Kashmir Kashmir Government Gazette, may from time to time exclude from its operation.

Extent.

2. All pounds established, pound-keepers appointed and villages determined under the State Council Circular No. 30 of 1889 (relating to Trespasses by Cattle), shall be deemed to be respectively established, appointed and determined under this Act.

Savings.

3. In this Act:—

"Officer of Police" includes also village watchmen and [3][in any local area with respect to which a Notification under section 33 is for the time being in force, also any employee of the local authority referred to in that section.]

Interpretation clause.

[1]Short title and commencement are given and regulated by Act IV of 1977.

[2]For the expression "His Highness" the expression "His Highness in Council" was substituted throughout the Act *vide* Notification 22-L/83. This expression however was further substituted by the expression "His Highness' Government Jammu and Kashmir" throughout the Act *vide* Notification No. 11-L/84 published in Government Gazette 9th Magher 1984.

[3]Added *vide* Notification 22-L/83 published in Government Gazette dated 19th Magh 1983.

"Cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, kids.

[1]["Local authority" means anybody of persons for the time being invested by Law with the control and administration of any matters within a specified local area, and]

[1]["Local fund" means any fund under the control or management of a local authority.]

CHAPTER II.

POUNDS AND POUND-KEEPERS.

Establishment of pounds.

4. Pounds shall be established at such places as the Superintendent of Police of a Province, subject to the general control of His Highness' Government Jammu and Kashmir from time to time directs.

The village by which every pound is to be used shall be determined by the Superintendent of Police of a Province.

Control of pounds.

Rates of charge for feeding impounded cattle.

5. The pounds shall be under the control of the Superintendent of Police of a Province; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

Appointment of pound-keepers.

6. The Superintendent of Police of a Province shall also appoint for each pound a pound-keeper.

Suspension or removal of pound-keepers.

Every pound-keeper appointed by the Superintendent of Police of a Province may be suspended or removed by him.

Pound-keepers may hold other offices.

Any pound-keeper may hold simultaneously any other office under Government.

Pound-keepers to be "public servants".

Every pound-keeper shall be deemed a public servant within the meaning of the [2]Ranbir Dand Bidhi.

Duties of Pound-keepers.

To keep registers and furnish returns.

7. Every pound-keeper shall keep such registers and furnish such returns as His Highness' Government Jammu and Kashmir from time to time direct.

[1] Added *vide* Notification 22-L/83 published in Government Gazette dated 19th March, 1983.

[2] Ranbir Penal Code

8. When cattle are brought to a pound, the pound-keeper shall enter in his register—

To register seizures.

(a) the number and description of the animals,

(b) the day and hour on and at which they were so brought,

(c) the name and residence of the seizer, and

(d) the name and residence of the owner, if known and shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

To take charge of and feed cattle.

CHAPTER III.

IMPOUNDING CATTLE.

10. To cultivator or occupier of any land,

Cattle damaging land.

or any person who has advanced cash for the cultivation of the crop or produce on any land,

or the vendee or mortgagee of such crop or produce, or any part thereof,

may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce thereon, and send them or cause them to be sent within twenty four hours to the pound established for the village in which the land is situate.

All officers of Police shall, when required, aid in preventing (a) resistance to such seizures, and (b) rescues from persons making such seizures.

Police to aid seizures.

11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like, and officers of Police, may seize, or cause to be seized, any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments, and the like, or the sides or slopes of such roads, canals, drainage-works or embankments, or found straying thereon,

Cattle damaging public roads, canals and embankments.

and shall send them or cause them to be sent within twenty-four hours to the nearest pound.

12. For every head of cattle impounded as aforesaid, the pound-keeper shall levy a fine accord-

Fines for cattle impounded.

ing to the following scale:—

	Rs.	a.	p.
Elephant	2	0	0
Camel	1	0	0
Buffalo, horse, mare, gelding or pony	0	8	0
Bull, bullock, cow, heifer or ass ..	0	4	0
Pig, sheep, goat, ram or ewe ..	0	2	0

NOTE.—Calf, lamb, kid, colt or filly under six months shall be charged at half rates.

Provided that when it appears to His Highness' Government Jammu and Kashmir, from the report of Superintendent of Police of a Province, or on the representation of a local authority, that, in any local area subject to the jurisdiction or control of such Superintendent of Police or authority, cattle are habitaully allowed to trespass on land and damage crops or other produce theron, His Highness' Government Jammu and Kashmir may, by notification in the Jammu and Kashmir Government Gazette, direct that, for every head of cattle of any kind specified there in which may be seized within such local area and impounded as aforesaid, the pound-keeper shall levy such fine, not exceeding double the fine mentioned in the foregoing scale as may be prescribed in the notification.

List of fines and charges for feeding.

All fines so levied shall be sent to the Superintendent of Police of a Province through such officer as [1][the Government] from time to time direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be stuck up in a conspicuous place on or near to every pound.

[1][The Government] may at any time, by notification in the Jammu and Kashmir Government Gazette, cancel or vary a notification under the proviso to the first paragraph of this section.

CHAPTER IV.

DELIVERY OR SALE OF CATTLE.

Procedure when owner claims the cattle and pays fines and charges.

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

[1] In section 12 for the words "His Highness" the words "the Government" substituted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

Procedure if cattle be not claimed within a week.

14. If the cattle be not claimed within seven days from the date of their being impounded, the fact shall be reported to a Magistrate whom the Magistrate of the District appoints in this behalf.

Such Magistrate shall thereupon stick up in a conspicuous part of his office a notice stating—

(a) the number and description of the cattle,

(b) the place where they were seized,

(c) the place where they are impounded,

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said Magistrate, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs:

Provided that, if any such cattle are, in the opinion of the Magistrate, not likely to fetch a fair price if sold as aforesaid they may be disposed of in such mannaer as he thinks fit.

Delivery to owner disputing legality of seizure, but making deposit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal, and that the owner is about to make a complaint under section 20, then upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

Proceedure when owner refuses or omits to pay the fines and expenses.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such Magistrate, at such place and time and subject to such conditions, as are referred to in section 14.

Deduction of fines and expenses.

The fines leviable and the expenses of feeding and watering together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

Delivery of unsold cattle and balance of proceeds.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing—

(a) the number of cattle seized,

(b) the time during which they have been impounded,
(c) the amount of fines and charges incurred,
(d) the number of cattle sold,
(e) the proceeds of sale, and
(f) the manner in which those proceeds have been disposed of.

Receipt.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

Disposal of fines, expenses and surplus proceeds of sale.

17. The Magistrate by whom the sale was made shall remit to the Treasury the fines so deducted.

The charges for feeding and watering deducted under section 16 shall be paid over to the pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be held in deposit for three months, and if no claim thereto be preferred and established within that period shall, at its expiry, be remitted to the treasury.

18. Omitted.

Officers and pound-keepers not to purchase cattle at sales under Act.

19. No Magistrate, officer of Police, or other officer or pound-keeper appointed under the provisions herein contained, shall, directly or indirectly, purchase any cattle at a sale under this Act.

Pound-keepers when not to release impounded cattle.

No pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

CHAPTER V.

COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION.

Power to make complaints.

20. Any person whose cattle have been seized under this Act, or, having been so seized, have been detained in contravention of this Act may, at any time within ten days from the date of the seizure, make a complaint to the Magistrate of the District or any Magistrate authorised to receive and try charges without reference by the Magistrate of the District.

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it be verbal, the substance of it shall be taken down in writing by the Magistrate.

Procedure on complaint.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle, together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle;

Compensation for illegal seizure or detention

and, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release, and direct that the fines and expenses leviable under this Act shall be paid by the person who made the seizure or detained the cattle.

Release of cattle.

23. The compensation, fines and expenses mentioned in section 21 may be recovered as if they were fines imposed by the Magistrate.

Recovery of compensation.

CHAPTER VI.

PENALTIES.

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

and whoever rescues the same after seizure, either from a pound or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

shall on conviction before a Magistrate, be punished with imprisonment for a period not exceeding one month, or with fine not exceeding fifty rupees, or with both.

25. Any fine imposed under the next following section or for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of tres-

Recovery of penalty for mischief committed by causing cattle to trespass.

passing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

Penalty for damage caused to land or crops or public roads by pigs.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road, by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

His Highness' Government Jammu and Kashmir by notification in the Jammu and Kashmir Government Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if it had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.

Penalty on pound-keeper failing to perform duties.

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19 or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the pound-keepers salary.

Application of fines recovered under section 25, 26, or 27.

28. All fines recovered under section 25, section 26, or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII.

SUITS FOR COMPENSATION.

Saving of rights to sue for compensation.

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set off and deducted from any sum claimed by or awarded to him as compensation in such suit.

Set off.

CHAPTER VIII.

SUPPLEMENTAL.

31. The Superintendents of Police, may, within their respective jurisdictions, by notification in the Jammu and Kashmir Government Gazette, fix or from time to time revise the scale of charges for the up-keep of the impounded cattle for the purposes of this Act.

Power of Superintendents of Police to fix and revise the scale of charges.

32. The pounds established under this Act may, whenever necessary, be utilized for the up-keep of cattle to which the provisions of the Law for the time being in force, relating to unclaimed or attached property apply. The expenses of such cattle shall be paid according to the scale in force.

Pounds may be used for unclaimed or attached cattle.

[1][**33.** His Highness' Government Jammu and Kashmir, may, from time to time, subject to such conditions as may be considered proper, by Notification in the Jammu and Kashmir Government Gazette:—

Transfer of functions and surplus to any local authority.

(a) transfer to any local authority all or any of the functions of His Highness' Government Jammu and Kashmir or the Superintendent of Police of the Province under this Act within the local area subject to the jurisdiction of the local authority, and

(b) direct that the whole or any part of the surplus accruing in such local area under section 17 of this Act shall be placed to the credit of such local fund or funds as may be formed for such local area;

and may from time to time by Notification in the Jammu and Kashmir Government Gazette cancel or vary any Notification under this section.]

[1]**Section 33 added by Notifiction 22-L/83 published in Government Gazetted dated 19th Magh 1983.**

THE Contract Act, 1977.

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THE CONTRACT ACT, 1977.

Act No. IX of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September 1920, and State Council Resolution No. 1 dated 8th April 1925 (Notification 14-L/81).*]

WHEREAS it is expedient to define and amend certain parts of the law relating to contracts; It is hereby enacted as follows:—

Preamble.

[1]PRELIMINARY.

1. Nothing herein contained shall affect the provisions of any Act not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

Enactments repealed.

2. In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:—

Interpretation clause.

(a) When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal:

(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise:

[1]Short title, extent and commencement are given and regulated by Act. IV of 1977.

(c) The person making the proposal is called the "promisor," and the person accepting the proposal is called the "promisee":

(d) When, at the desire of the promisor, the promisee or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise:

(e) Every promise and every set of promises, forming the consideration for each other, is an agreement:

(f) Promises which form the consideration or part of the consideration for each other are called reciprocal promises:

(g) An agreement not enforceable by law is said to be void:

(h) An agreement enforceable by law is a contract:

(i) An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract:

(j) A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

CHAPTER I.

OF THE COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS.

Communication acceptance and revocation, of proposals.

3. The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation or which has the effect of communicating it.

Communication when complete.

4. The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

The communication of an acceptance is complete,—

as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor;

as against the acceptor, when it comes to the knowledge of the proposer.

The communication of a revocation is complete,—

as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;

as against the person to whom it is made, when it comes to his knowledge.

Illustrations.

(*a*) A proposes, by letter, to sell a house to B at a certain price.
The communication of the proposal is complete when B receives the letter.
(*b*) B accepts A's proposal by a letter sent by post.
The communication of the acceptance is complete,—
as against A, when the letter is posted ;
as against B, when the letter is received by A.
(*c*) A revokes his proposal by telegram.
The revocation is complete as against A when the telegram is despatched. It is complete as against B when B receives it
B revokes his acceptance by telegrams. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him.

Revocation of proposals and acceptance.

5. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustrations.

A proposes, by a letter sent by post, to sell his house to B.
B accepts the proposal by a letter sent by post.
A may revoke his proposal at any time before or at the movement when B posts his letter of acceptance, but not afterwards.
B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A but not afterwards.

Revocation how made.

6. A proposal is revoked—

(1) by the communication of notice of revocation by the proposer to the other party;
(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Acceptance must be absolute.

7. In order to convert a proposal into a promise, the acceptance must—

(1) be absolute and unqualified;
(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be

accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Acceptance by performing conditions, or receiving consideration.

8. Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Promises, express and implied.

9. In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II.

OF CONTRACTS, VOIDABLE CONTRACTS AND VOID AGREEMENTS.

What agreements are contracts.

10. All agreements are contracts, if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.

Nothing herein contained shall affect any law in force in the State and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

Who are competent to contract.

11. Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

What is a sound mind for the purposes of contracting.

12. A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Illustrations.

(*a*) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

(*b*) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgement as to its effect on his interests, cannot contract whilst such delirium or drunkness lasts.

"Consent" defined.

13. Two or more persons are said to consent when they agree upon the same thing in the same sense.

"Free consent" defined.

14. Consent is said to be free when it is not caused by—

(1) coercion, as defined in section 15, or
(2) undue influence, as defined in section 16, or
(3) fraud, as defined in section 17, or
(4) misrepresentation, as defined in section 18, or
(5) mistake subject to the provisions of sections 20, 21 and 22.

Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation or mistake.

"Coercion" defined.

15. "Coercion" is the committing, or threatening to commit, any act forbidden by the [1]Ranbir Dand Bidhi or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Explanation.—It is immaterial whether the [1]Ranbir Dand Bidhi is or is not in force in the place where the coercion is employed.

Illustrations.

A, on board ship on the high seas causes B to enter into an agreement by an act amounting to criminal intimidation under the [1]Ranbir Dand Bidhi.

A afterwards sues B for breach of contract at Calcutta.

A has employed coercion, although his act is not an offence by the law of England, and although [2]section 382 of the Ranbir Dand Bidhi was not in force at the time when or place where the act was done.

"Undue influence" defined.

16. (1) A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(2) In particular and without prejudice to the generality of the foregoing principle, a person is deemed to be in a position to dominate the will of another—

(a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or

[1]Ranbir Penal Code.
[2]Section 506 Ranbir Penal Code.

(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.

(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

Nothing in this sub-section shall affect the provisions of section 111 of the Evidence Act.

Illustrations.

(*a*) A having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence.

(*b*) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional services. B employes undue influence.

(*c*) A, being in debt to B, the money-lender of his village, contracts a fresh loan on terms which appears to be unconscionable. It lies on B to prove that the contract was not induced by undue influence.

(*d*) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unsuually high rate of interest. A accepts the loan on these terms This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

17. "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract:—

"Fraud" defined.

(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;

(2) the active concealment of a fact by one having knowledge or belief of the fact;

(3) a promise made without any intention of performing it;

(4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Illustrations.

(*a*) A sells, by auction, to B, a horse which A knows to be unsound. A says nothing to B about the horse's unsoundness. That is not fraud in A.

(*b*) B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

(*c*) B says to A—"if you do not deny it, I shall assume that the horse is sound." A says nothing. Here A's silence is equivalent to speech.

(*d*) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

"Misrepresentation" defined.

18. "Misrepresentation" means and includes—

(1) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him;

(3) causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Voidability of agreements without free consent.

19. When consent to an agreement is caused by coercion, * * * * * *., fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract, whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception.—If such consent was caused by misrepresentation or by silence, fraudulent, within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation—A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Illustrations.

(*a*) A, intending to deceive B, falsely represents that five hundred maunds of indigo are made annually at A's factory, thereby induces B to buy the factory. The contract is voidable at the option of B.

(*b*) A, by a misrepresentation, leads B erroneously to believe that five hundred maunds of indigo are made annually at A's factory. B examines

the accounts of the factory, which show that only four hundred maunds of indigo have been made. After this B buys the factory. The contract is not voidable on account of A's misrepresentation.

(*c*) A fraudulently informs B that A's estate is free from incumbrance. B thereupon buys the estate. The estate is subject to a mortgage. B may either avoid the contract or may insist on its being carried out and the mortgage-debt redeemed.

(*d*) B, having discovered a vein of ore on the estate of A, adopts means to conceal, and does conceal, the existence of the ore from A. Through A's ignorance B is enabled to buy the estate at an under-value. The contract is voidable at the option of A.

(*e*) A is entitled to succeed to an estate at the death of B; B dies: C, having received intilligence of B's death, prevents the intelligenc reaching A, and thus induces A to sell him his interest in the estate. The sale is voidable at the option of A.

Power to set aside contract induced by undue influence.

19-A. When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Illustrations.

(*a*) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(*b*) A, a money-lender, advances Rs. 100 to B, an agriculturist, and by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

Agreement void where both paries are under mistake as to matter of fact.

20. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation.—An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

Illustrations.

(*a*) A agrees to sell to B a specific charge of goods supposed to be on its way from England to Bombay. It turns out that before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither party was aware of the facts. The agreement is void.

(*b*) A agrees to buy from B a certain horse. It turns out that the horse was dead at the time of the bargain, though neither party was aware of the fact. The agreement is void.

(*c*) A, being entitled to an estate for the life of B agrees to sell it to C. B was dead at the time of agreement, but both parties were ignorant of the fact. The agreement is void.

21. A contract is not voidable because it was caused by a mistake as to any law in force in the State; but a mistake as to a law not in force in the the State has the same effect as a mistake of fact.

Effect of mistakes as to law.

Illustrations.

A and B make a contract grounded on the erroneous belief that a particular debt is barred by the Law of Limitation; the contract is not voidable.

22. A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

Contract caused by mistake of one party to matter of fact

23. The consideration or object of an agreement is lawful, unless—

What considerations and objects are lawful and what not.

it is forbidden by law; or

is of such a nature that, if permitted, it would defeat the provisions of any law; or

is fraudulent; or

involves or implies injury to the person or property of another; or

the Court regards it as immoral, or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations.

(*a*) A agrees to sell his house to B for 10,000 rupees. Here B's promise to pay the sum of 10,000 rupees is the consideration for A's promise to sell the house, and A's promise to sell the the house, is the consideration for 's promise to pay the 10,000 rupees. These are lawful considerations.

(*b*) A promises to pay B, 1,000 rupees at the end of six months, if C, who owes that sum to, B, fails to pay it. B promises to grant time to C accordingly. Here the promises of each party is the consideration for the promise of the other party and they are lawful considerations.

(*c*) A promises, for a certain sum paid to him by B, to make good to B the value of his ship if it is wrecked on a certain voyage. Here A's promise is the consideration for B's payment, and B's payment is the consideration for A's promise, and these are lawful considerations.

(*d*) A promises to maintain B's child and B promises to pay a 1,000 rupees yearly for the purpose. Here the promise of each party is the consideration for the promise of the other party. They are lawful considerations.

(*e*) A, B and C enter into an agreement for the division among them of grains acquired, or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

(*f*) A promises to obtain for B an employment in the public service, and B promises to pay 1,000 rupee to A. The agreement is void, as the consideration for it is unlawful.

(*g*) A, being agent for a landed proprietor, agrees for money, without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void as it implies a fraud by concealment by A, on his principal.

(*h*) A promises B to drop a prosecution which he has instituted against B for robberry, and B promises to restore the value of the things taken The agreement is void, as its object is unlawful,

(*i*) A's estate is sold for arrears of revenue under the provisions of an Act of the legislature, by which the defaulter is prohibited from purchasing the estate. B, upon an understanding with A, becomes the purchaser, and agrees to convey the estate to A upon receiving from him the price which B has paid. The agreement is void, as it renders the transaction, in effect, a purchase by the defaulter, and would so defeat the object of the law.

(*j*) A, who is B's mukhtar, promises to exercise his influence, as such, with B in favour of C, and C promises to pay 1,000 rupees to A. The agreement is void, because it is immoral.

(*k*) A agrees to let her daughter to hire to B for concubinage. The agreement is void, because it is immoral, though the letting may not be punishable under the [1]Ranbir Dand Bidhi.

Void Agreements.

24. If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

Agreements void, if considerations and objects unlawful in part.

Illustrations.

A promises to superintend, on behalf of B, a legal manufacture of indigo, and an illegal traffic in other articles B promises to pay to A salary of 10,000 rupees a year. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

25. An agreement made without consideration is void, unless—

Agreement without consideration void unless it is in writing and registered,

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other, or unless

or is a promise to compensate for something done,

(2) it is a promise, to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless

[1]Ranbir Penal Code.

(3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

Or is a promise to pay a debt barred by limitation law.

In any of these cases, such an agreement is a contract.

Explanation 1.—Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2.—An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

Illustrations.

(*a*) A promises, for no consideration, to give to B Rs. 1,000. This is a void agreement.

(*b*) A, for natural love and affection, promises to give his son, B, Rs. 1,000 A puts his promise to B into writing and registers it. This is a contract.

(*c*) A finds B's purse and gives it to him. B promises to give A Rs. 50. This is a contract.

(*d*) A supports B's infant son. B promises to pay A's expenses in so doing. This is a contract.

(*e*) A owes B Rs. 1,000, but the debt is barred by the Limitation Act. A signs a written promise to pay B Rs. 500 on account of the debt. This is a contract.

(*f*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A's consent to the agreement was freely given. The agreement is a contract notwithstanding the inadequacy of the consideration.

(*g*) A agrees to sell a horse worth Rs. 1,000 for Rs. 10. A denies that his consent to the agreement was freely given.

The inadequacy of the consideration is a fact which the Court should take into account in considering whether or not A's consent was freely given.

26. Every agreement in restraint of the marriage of any person, other than a minor, is void.

Agreement in restraint of marriage void.

27. Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Agreement in restraint of trade void.

Exception 1.—One who sells the good-will of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the good-will from him, carries on a like business therein:

Saving of agreement not to carry on business of which good-will is sold.

Provided that such limits appear to the Court reasonable, regard being had to the nature of the business.

[1][* * * * *]

Agreements in restraint of legal proceedings void.

28. Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent.

Saving of contract to refer to arbitration dispute that may arise.

Exception 1.—This section shall not render illegal a contract by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subjects shall be referred to arbitration, and that only the amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.

Suits barred by such contract.

When such a contract has been made, a suit may be brought for its specific performance, and if a suit, other than for such specific performance, or for the recovery of the amount so awarded, is brought by one party to such contract against any other such party in respect of any subject which they have so agreed to refer, the existence of such contract shall be a bar to the suit.

Saving of contract to refer questions that have already arisen.

Exception 2.—Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already arisen, or affect any provision of any law in force for the time being as to references to arbitration.

Agreements void for uncertainty.

29. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

Illustrations.

(*a*) A agrees to sell to B "a hundred tons of oil." There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(*b*) A agrens to sell to B one hundred tons of oil of a specified discription, known as an article of commerce. There is no uncertainty here to make the agreement void.

(*c*) A, who is a dealer in cocoanut-oil only agrees to sell to B "one hundred tons of oil." The nature of A's trade affords an indication of the meaning of the words, and A has entered into contract for the sale of hundred tons of cocoanut-oil.

(*d*) A agrees to sell to B "all the grain in may granary at Ramnagar." There is no uncertainty here to make the agreement void.

[1]Exceptions 2 and 3 to section 27 repealed *vide* Act V of 1996 published in Government Gazette dated 25th Bahran 1996.

(*e*) A agrees to sell to B "one hundred maunds of rice at a price to be fixed by C." As the price is capable of being made certain, there is no uncertainty here to make the agreement void.

(*f*) A agrees to sell to B "my white horse for rupees five hundred or rupees one thousand." There is nothing to show which of the two prices was to be given. The agreement is void.

Agreements by way of wager void.

30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.

This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section [1]214-A of the Ranbir Dand Bidhi not affected.

Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section [1]214-A of the Ranbi Dand Bidhi apply.

CHAPTER III.

OF CONTINGENT CONTRACTS.

"Contingent contract" defined.

31. A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

Illustration.

A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract.

Enforcement of contracts contingent on an event happening.

32. Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event happened.

If the event becomes impossible such contracts become void.

Illustrations.

(*a*) A makes a contract with B to buy B's horse if A survives C. This contract cannot be enforced by law unless and until C dies in A's life-time.

[1]Section 294-A Ranbir Penal Code.

(*b*) A makes a connract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

(*c*) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of contracts contingent on an event not happening.

33. Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustration.

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks.

When event on which contract is contingent be deemed impossible, if it is the future conduct of a living person.

34. If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustration.

A agrees to pay B a sum of money if B marries C.

C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

When contracts become void which are contingent on happening specified event within fixed time.

35. Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time.

Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations.

(*a*) A promises to pay B a sum of money if a certain ship returns within a year. The contract may by enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

(*b*) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

36. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

Agreement contingent on impossible events void.

Illustrations.

(*a*) A agrees to pay B 1,000 rupees if two straight lines should enclose a space. The agreement is void.

(*b*) A agrees to pay B 1,000 rupees if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

CHAPTER IV.

OF THE PERFORMANCE OF CONTRACTS.

Contracts which must be performed.

37. The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law.

Obligation of parties to contracts.

Promises bind the representative of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

A promise may be enforced by the legal representation of the promisee in the event of the death of such promisor before performance, unless a contrary intention appears from the contract.

Illustrations.

(*a*) A promises to deliver goods to B on a certain day on payment of Rs. 1,000 A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay the Rs. 1,000 to A's representatives

(*b*) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

38. Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Effect of refusal to accept offer of performance.

Every such offer must fulfil the following conditions:—

(1) it must be unconditional:

(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may

have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do:

(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Illustration.

A contracts to deliver to B at his warehouse, on the first March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

Effect of refusal of party to promise wholly.

39. When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Illustrations.

(*a*) A, a singer, enters into a contract with B, the manager of the theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A wilfully absents herself from the theatre. B is at liberty to put an end to the contract.

(*b*) A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her at the rate of 100 rupees for each night. On the sixth night A wilfully absents herself. With the assent of B, A sings on the seventh night. B has signified his acquiescence in the continuance of the contract, and cannot now put an end to it but is entitled to the compensation for the damage sustained by him through A's failure to sing on the sixth night.

By whom Contracts must be performed.

Person by whom promise is to be performed.

40. If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Illustrations.

(*a*) A promises to pay B a sum of money. A may perform this promise either by personally paying the money to B or by causing it to be paid to B by another, and, if A dies before the time appointed for payment, his representative must perform the promise, or employ some proper person to do so.

(*b*) A promises to paint a picture for B. A must perform this promise personally.

Effect of accepting performance from third person.

41. When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Devolution of joint liabilities.

42. When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the representatives of all jointly, must fulfil the promise.

Any one of joint promisors may be compelled to perform.

43. When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution.

Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution.

If any one of two or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

Explanation—Nothing in this section shall prevent a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Illustrations.

(*a*) A,B and C jointly promise to pay D 3,000 rupees. D may compel either A or B or C to pay him 3,000 rupees.

(*b*) A, B and C jointly promise to pay D the sum of rupees 3,000. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts. C is entitled to receive 500 rupees from A's estate and 1,250 rupees from B.

(*c*) A, B and C are under a joint promise to pay D 3,000 rupees. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive 1,500 rupees from B.

(*d*) A, B and C are under a joint promise to pay D 3,000 rupees, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect of release of one joint promisor.

44. Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors; neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

Devolution of joint-rights.

45. When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the representatives of all jointly.

Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time for performance of promise where no application is to be made and no time is specified.

46. Where, by the contract, a promisor is to perform his promise without applictaion by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation—The question "what is a reasonable time" is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's wharehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and

Illustrations.

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Illustration.

A, in consideration of 5,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time for performance of promise where no application is to be made and no time is specified.

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Explanation—The question "what is a reasonable time" is, in each particular case, a question of fact.

Time and place for performance of promise where time is specified and no application to be made.

47. When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Illustration.

A promises to deliver goods at B's wharehouse on the first January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for performance on certain day to be at proper time and place.

48. When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and

within the usual hours of business.

Explanation.—The question "what is a proper time and place" is, in each particular case, a question of fact.

Place for performance of promise where no application to be made and no place fixed for performance.

49. When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Illustration.

A undertakes to deliver a thousand maunds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it and must deliver it to him at such place.

Performance in manner or at time prescribed or sanctioned by promisee.

50. The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

Illustrations.

(*a*) B owes A 2,000 rupees. A desires B to pay the amount to A's account with C, a banker. B, who also banks with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

(*b*) A and B are mutually indebted. A and B settle an account by setting off one item against another, and B pays A the balance found to be due from him upon such settlement. This amounts to a payment by A and B, respectively, of the sums which they owed to each other.

(*c*) A owes B 2,000 rupees. B accepts some of A's goods in reduction of the debt. The delivery of the goods operates as a part payment.

(*d*) A desires B, who owes him Rs. 100 to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A.

Performance of Reciprocal Promises.

Promisor not bound to perform, unless reciprocal promisee ready and willing to perform.

51. When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Illustrations.

(*a*) A and B contract that A shall deliver goods to B to be paid for by B on delivery.

A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery.

B need not pay for the goods, unless A is ready and willing to deliver them on payment.

(*b*) A and B contract that A shall deliver goods to B at a price to be paid by instalments, the first instalment to be paid on delivery.

A need not deliver, unless B is ready and willing to pay the first instalment on delivery.

B need not pay the first instalment, unless A is ready and willing to deliver the goods on payment of the first instalment.

Order of performance of reciprocal promises.

52. Where the order in which reciprocal promises are to to be performed is expressly fixed by the contract, they shall be performed in that order; and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Illustrations.

(*a*) A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

(*b*) A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the money. A's promise need not be performed until the security is given, for the nature of the transaction requires that A should have security before he delivers up his stock.

Liability of party preventing event on which contract is to take effect.

53. When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of non-performance of the contract.

Illustrations.

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescined it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises.

54. When a contract consists of reciprocal promises, such that one of them cannot be perfomed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Illustrations.

(*a*) A hires B's ship to take in and convey from Calcutta to the Mauritius, a cargo to be provided by A, B receiving a certain freight for its conveyance.

A does not provide any cargo for the ship. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

(*b*) A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish any scaffolding or timber, and the work cannot be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

(*c*) A contracts with B to deliver to him, at a specified price, certain merchandise on board a ship which cannot arrive for a month, and B engages to pay for the merchandise within a week from the date of the contract. B does not pay within the week. A's promise to deliver need not be performed, and B must make compensation.

(*d*) A promises B to sell him one hundred bales of merchandise, to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed, and A must make compensation.

Effect of failure to perform at fixed time, in contract in which time is essential.

55. When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.

If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon.

If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so.

Agreement to do impossible act.

56. An agreement to do an act impossible in itself is void.

Contract to do act afterwards becoming impossible or unlawful.

A contract to do an act which after the contract is made becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

Where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Illustrations.

(*a*) A agrees with B to discover treasure by magic. The agreement is void.

(*b*) A and B contract to marry each other. Before the time fixed for the marriage, A goes mad. The contract becomes void.

(*c*) A contracts to marry B, being already married to C, and being forbidden by the law to which he is subject to practice polygamy. A must make compensation to B for the loss caused to her by the non-performance of his promise.

(*d*) A contracts to take in cargo for B at a foreign port. A's Government afterwards declares war against the country in which the port is situated. The contract becomes void when war is declared.

(*e*) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

57. Where persons reciprocally promise, firstly, to do certain things which are legal, and, secondly, under specified circumstances, to do certain other things which are illegal, the first set of promises is a contract, but the second is a void agreement.

Reciprocal promise to do things legal, and also other things illegal.

Illustration.

A and B agree that A shall sell B a house for 10,000 rupees, but that, if B uses it as a gambling house, he shall pay A 50,000 rupees for it.

The first set of reciprocal promises, namely, to sell the house and to pay 10,000 rupees for it, is a contract.

The second set is for an unlawful object, namely that B may use the house as a gambling house, and is a void agreement.

58. In the case of an alternative promise, one branch of which is legal and the other illegal, the legal, branch alone can be enforced.

Alternative promise, one branch being illegal.

Illustration.

A and B agree that A shall pay B 1,000 rupees, for which B shall afterwards deliver to A either rice or smuggled opium.

This is a valid contract to deliver rice, and void agreement as to the opium.

Appropriation of Payments.

59. Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Application of payment where debt to be discharged is indicated.

Illustrations.

(*a*) A owes B, among other debts 1,000, rupees upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B 1,000 rupees. The payment is to be applied to the dircharge of the promissory note.

(*b*) A owes to B, omong other debts, the sum of 567 rupees. B writes to A and demands payment of this sum. A sends to B 567 rupees. This payment is to be applied to the discharge of the debt of which B had demanded payment.

60. Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of payment where debt to be discharged is not indicated.

61. Where neither party makes any appropriation the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably.

Application of payment where neither party appropriates.

Contracts which need not be performed.

62. If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performd.

Effect of novation, rescision and alteration of contract.

Illustrations.

(*a*) A owes money to B under a contract. It is agreed between A. B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.

(*b*) A owes B 10,000 rupees. A enters into an arrangement with B, and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.

(*c*) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees. B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into.

Promisee may dispense with or remit performance of promise.

63. Every promisee may dispense with or remit wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Illustrations.

(*a*) A promises to paint a picture for B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

(*b*) A owes B 5,000 rupees. A pays to B, and B accepts, in satisfaction of the whole debt, 2,000 rupees paid at the time and place at which the 5,000 rupees were payable. The whole debt is discharged.

(*c*) A owes B 5,000 rupee. C pays to B 1,000 rupees, and B accepts them, in satisfaction of his claim on A. This payment is a discharge of the whole claim.

(*d*) A owes B, under a contract, a sum of money, the amount of which has not been ascertained. A without ascertaining the amount gives to B, and B. in satisfaction thereof, accepts, the sum of 2,000 rupees. This is a discharge of the whole debt, whatever may be its amount.

(*e*) A owes B 2,000 rupees, and is also indebted to other creditors. A makes an arrangement with his creditor, including B, to pay them a composition of eight annas in the rupee upon their respective demands. Payment to B of 1,000 rupees is a discharge of B's demand.

Consequences of rescision of voidable contract.

64. When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received.

Obligation of person who has received advantage under void agreement or contract that becomes void.

65. When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.

Illustrations.

(*a*) A pays B 1,000 rupees in consideration of B's promising to marry C, A's daughter. C is dead at the time of the promise. The agreement is void, but B must repay A the 1,000 rupees.

(*b*) A contracts with B to deliver to him 250 maunds of rice before the first of May. A delivers 130 maunds only before that day and none after. B retains the 150 maunds after the first of May. He is bound to pay A for them.

(*c*) A, a singer, contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her a hundered rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B must pay A for the five nights on which she had sung.

(*d*) A contracts to sing for B at a concert for 1,000 rupees, which are paid in advance. A is too ill to sing. A is not bound to make compensation to B for the loss of the profits which B would have made if A had been able to sing, but must refund to B the 1,000 rupees paid in advance.

Mode of communicating or revoking rescission of voidable contract.

66. The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal.

Effect of neglect of promisee to afford promisor reasonable facilities for performance.

67. If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Illustration.

A contracts with B to repair B's house.

B neglects or refuses to point out to A the places in which his house requires repair.

A is excused for the non-performance of the contract if it is caused by such neglect or refusal.

CHAPTER V.

OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT.

Claim for necessaries supplied to person incapable of contracting, or on his account.

68. If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

Illustrations.

(*a*) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(*b*) A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

69. A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.

Reimbursement of person paying money due by another in payment of which he is interested.

Illustration.

B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of such sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the Government the sum due from A. A is bound to make good to B the amount so paid.

70. Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

Obligation of person enjoying benefit of non-gratuitous act.

Illustrations.

(*a*) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

(*b*) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

71. A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee.

Responsibility of finders of goods.

72. A person to whom money has been paid or anything delivered, by mistake or under coercion, must repay or return it.

Liability of person to whom money is paid, or thing delivered, by mistake or under coercion.

Illustrations.

(*a*) A and B jointly owe 100 rupees to C. A alone pays the amount to C and B not knowing this fact, pays 100 rupees over again to C. C is bound to repay the amount to B.

(*b*) A railway company refuses to deliver up certain goods to the consignee, except upon the payment of an illegal charge for carriage. The consignee pays the sum charged in order to obtain the goods. He is entitled to recover so much of the charge as was illegally excessive.

CHAPTER VI.

OF THE CONSEQUENCES OF BREACH OF CONTRACT.

73. When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caus-

Compensation for loss or damage caused by breach of contract.

ed to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.

Explanation.—In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Illustrations.

(*a*) A contracts to sell and deliver 50 maunds of saltpetre to B, at a certain price to be paid on delivery. A breaks his promise, B is entitled to receive from A, by way of compensation, the sum, if any, by which the contract price falls short of the price for which B might have obtained 50 maunds of saltpetre of like quality at the time when the saltpetre ought to have been delivered.

(*b*) A hires B's ship to go to Bombay, and there take on board, on the first of January, a cargo which A is to provide and to bring it to Calcutta, the freight to be paid when earned. B's ship does not go to Bombay, but A has opportunities of procuring suitable conveyance for the cargo upon terms as advantageous as those on which he had chartered the ship. A avails himself of those opportunities, but is put to trouble and expense in doing so. A is entitled to receive compensation from B in respect of such trouble and expense.

(*c*) A contracts to buy of B, at a stated price, 50 maunds of rice, no time being fixed for delivery. A afterward informs B that he will not accept the rice if tendered to him. B is entitled to receive from A, by way of compensation, the amount, if any, by which the contract price exceeds that which B can obtain for the rice at the time when A informs B that he will not accept it.

(*d*) A contracts to buy B's ship for 60,000 rupees, but breaks his promise. A must pay to B, by way of compensation, the excess, if any, of the contract price over the price which B can obtain for the ship at the time of the breach of promise.

(*e*) A, the owner of a boat, contracts with B to take a cargo of jute to Mirzapur, for sale at that place starting on a specified day. The boat, owing to some avoidable cause, does not start at the time appointed, whereby the arrival of the cargo at Mirzapur is delayed beyond the time when it would have arrived if the boat had sailed according to the contract. After that date, and before the arrival of the cargo, the price of jute falls. The measure of the compensation payable to B by A is the difference between the price which B could have obtained for the cargo at Mirzapur at the time when it would have arrived if forwarded in due course, and its market price at the time when it actually arrived.

(*f*) A contracts to repair B's house in a certain manner and receives payment in advance. A repairs the house, but not according to contract. B is entitled to recover from A the cost of making the repairs conform to the contract.

(*g*) A contracts to let his ship to B for a year, from the first of January for a certain price. Freights rise, and, on the first of January, the hire obtainable for the ship is higher than the contract price. A breaks his promise. He must pay to B, by way of compensation, a sum equal to the difference between the contract price and the price for which B could hire a similar ship for a year on and from the first of January.

(*h*) A contracts to supply B with a certain quantity of iron at a fixed price, being a higher price than that for which A could procure and deliver the iron. B wrongfully refuses to receive the iron. B must pay to A, by way of compensation, the difference between the contract price of the iron and the sum for which A could have obtained and delivered it.

(*i*) A delivers to B, a common carrier, a machine, to be conveyed, without delay, to A's mill, informing B that his mill is stopped for want of the machine. B unreasonably delays the delivery of the machine, and A, in consequence, loses a profitable contract with the Government. A is entitled to receive from B, by way of compensation, the average amount of profit which would have been made by the working of the mill during the time that delivery of it was delayed, but not the loss sustained through the loss of the Government contract.

(*j*) A, having contracted with B to supply B with 1,000 tons of iron at 100 rupees a ton, to be delivered at a stated time, contracts with C for the purchase of 1,000 tons of iron at 80 rupees a ton, telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A, who cannot procure other iron, and B, in consequence, rescinds the contract. C must pay to A 20,00 rupees, being the profit which A would have made by the performance of his contract with B.

(*k*) A contracts with B to make and deliver to B, by a fixed day for a specified price, a certain piece of machinery. A does not deliver the piece of machinery at the time specified, and, in consequence of this, B is obliged to procure another at a higher price than that which he was to have paid to A, and is prevented from performing a contract which B had made with a third person at the time of his contract with A (but which had not been then communicated to A), and is compelled to make compensation for breach of that contract. A must pay to B, by way of compensation, the difference between the contract price of the piece of machinery and the sum paid by B for another, but not the sum paid by B to the third person by way of compensation.

(*l*) A, a builder, contracts to erect and finish a house by the first of January in order that B may give possession of it at that time to C, to whome B has contracted to let it. A is informed of the contract between B and C. A builds the house so badly that, before the first of January, it falls down and has to be re-built by B, who, in consequence, loses the rent which he was to have received from C, and is obliged to make compensation to C for the breach of his contract. A must make compenstion to B for the cost of re-building the house for the rent lost, and for the compensation made to C.

(*m*) A sells certain merchandise to B, warranting it to be of a particular quality, and B, in reliance upon this warranty, sells it to C with a similar warranty. The goods prove to be not according to the warranty, and B becomes liable to pay C a sum of money by way of compensation. B is entitled to be re-imbursed.

(*n*) A contracts to pay a sum of money to B on a day specified. A does not pay the money on that day. B in consequence of not receiving the money on that day is unable to pay his debts, and is totally ruined. A is not liable to make good to B anything except the principal sum he contracted to pay, to-

gether with interest up to the day of payment.

(o) A contracts to deliver 50 maunds of saltpetre to B on the first of January, at a certain price. B afterwards, before the first of January, contracts to sell the saltpeter to C at a price higher than the market price of the first of January. A breaks his promise. In estimating the compensation payable by A to B, the market price of the first January, and not the profit which would have arisen to B from the sale to C, is to be taken into account.

(*p*) A contracts to sell and deliver 500 bales of cotton to B on a fixed day. A knows nothing of B's mode of conducting his business. A breaks his promise, and B, having no cotton is obliged to close his mill. A is not responsible to B for the loss caused to B by the closing of the mill.

(*q*) A contracts to sell and deliver to B, on the first of January, certain cloth which B intends to manufacture into caps, of a particular kind, for which there is no demand, except at that season. The cloth is not delivered till after the appointed time, and too late to be used that year in making caps. B is entitled to receive ftom A, by way of compensation, the differense between the contract price of the cloth and its market price at the time of delivery, but not the profits which he has expected to obtain by making caps, nor the expenses which he has been put to in making preparation for the manufacture.

(*r*) A, a ship-owner, contracts with B to convey him from Calcutta to Sydeny in A's ship, sailing on the first of January, and B pays to A, by way of deposit, one-half of his passage-money. The ship does not sail on the first of January, and B, after being, in consequence, detained in Calcutta for some time, and thereby put to some expense, proceeds to Sydney in another vessel, and, in consequence, arriving too late in Sydney, loses a sum of money. A is liable to repay to B his deposit, with interest and the expense to which he is put by his detention in Calcutta, and the excess, if any of the passage-money paid for the second ship over tnat agreed upon for the first, but not the sum of money which B lost by arriving in Sydney too late.

Compensation for breach of contract where penalty stipulated for.

74. When a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation.—A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

Exception.—When any person enters into any bail-bond, recognizance or other instrument of the same nature, or under the provisions of any law, or under the orders of His Highness, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable, upon breach of the condition of any such instrument, to pay the whole sum mentioned therein.

Explanation.—A person who enters into a contract with Government does not necessarily thereby undertake any public duty, or promise to do an act in which the public are interested.

Illustrations.

(*a*) A contracts with B to pay B Rs. 1,000 if he fails to pay B Rs. 500 on a given day. A fails to pay B Rs. 500 on that day. B is entitled to recover from A such compenstation, not exceeding Rs. 1,000, as the Court considers reasonable.

(*b*) A contracts with B that, if A practises as a surgeon within Calcutta, he will pay B Rs. 5,000. A practises as a surgeon in Calcutta. B is entitled to such compensation, not exceeding Rs. 5,000, as the Court considers reasonable.

(*c*) A gives a recognizance binding him in a penalty of Rs. 500 to appear in Court on a certain day. He forfeits his recognizance. He is liable to pay the whole penalty.

(*d*) A gives B a bond for the repayment of Rs. 1,000 with interest at 12 per cent. at the end of six months, with a stipulation that in case of default, interest shall be payable at the rate of 75 per cent. from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensations as the Court considers reasonable.

(*e*) A, who owes money to B, a money lender, undertakes to repay him by delivering to him 10 maunds of grain on a certain date, and stipulates that, in the event of his not delivering the stipulated amount by the stipulated date, he shall be liable to deliver 20 maunds. This is a stipulation by way of penalty, and B is only entitled to reasonable compensation in case of breach.

(*f*) A undertakes to repay B a loan of Rs. 1,000 by five equal monthly instalments with a stipulation that, in default of payment of any instalment, the whole shall become due. This stipulation is not by way of penalty, and the contract may be enforced accordiug to its terms.

(*g*) A borrows Rs. 100 from B and gives him a bond for Rs. 200 payable by five yearly instalments of Rs. 40, with a stipulation that, in default of payment of any instalment, the whole shall become due. This is stipulation by way of penalty.

75. A person who rightly rescinds a contract is entitled to compensation for any damage which he has sustained through the non-fulfilment of the contract.

Party rightfully rescinding contract entitled to compensation.

Illustration.

A, a singer contracts with B, the manager of a theatre, to sing at his theatre for two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night, A wilfully absents herself from the theatre, and B, in consequence, rescinds the contract. B is entitled to claim compensation for the damage which he has sustained through the non-fulfilments of the contract.

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[1]CHAPTER VII.

SALE OF GOODS.
Sections 76-123.]

} Repealed.

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[1]Chapter VII, sections 76-123 repealed *vide* Act II of 1996 published in Government Gazette dated 26th Sawan 1996.

CHAPTER VIII.

OF INDEMNITY AND GUARANTEE.

"Contract of indemnity" defined.

124. A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a "contract of indemnity."

Illustratin.

A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of 200 rupees. This is a contract of indemnity.

Rights of indemnity holder when sued.

125. The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor—

(1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;

(2) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit;

(3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorised him to compromise the suit.

The promisor in a contract of indemnity, who has indemnified the promisee is entitled to the rights of a surety as defined in section 141.

Any contract of indemnity which has been obtained by means of misrepresentation, made by the promisee or with his knowledge or assent, concerning a material part of the transaction is invalid.

Explanation.—Keeping silence as to material circumstance is such misrepresentation.

"Contract of guarantee", "surety", "principal debtor", and "creditor."

126. A "contract of guarantee" is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who gives the guarantee is called the "surety"; the person in respect of whose default the guarantee is given is called the "principal debtor",

and the person to whom the guarantee is given is called the "creditor". A guarantee may be either oral or written.

127. Anything done, or any promise made, for the benefit of the principal debtor may be a sufficient consideration to the surety for giving the guarantee.

Consideration for guarantee.

Illustratins.

(*a*) B requests **A** to sell and deliver to him goods on credit. **A** agrees to do so, provided C will guarantee the payment of the price of the goods. C promises to guarantee the payment in considration of **A**'s promise to deliver the goods, this is a sufficient consideration for C's promise.

(*b*) A sells and delivers goods to B. C afterwards requests A to forbear to sue B for the debt for a year, and promises that if he does so, C will pay for them in default of payment by B. A agrees to forbear as requested. This is a sufficient considration for C's promise.

(*c*) A sells and delivers goods to B. C afterwards, without consideration, agrees to pay for them in default of B. The agreement is void.

128. The liability of the surety is co-extensive with that of the principal debtor, unless it is otherwise provided by the contract.

Illustration.

A guarantees to B the payment of a bill of exchange by C, the accepter. The bill is dishonoured by C. A is liable not only for the amount of the bill but also for any interest and charges which may have become due on it.

129. A guarantee which extends to a series of transactions is called a "continuing guarantee"

Continuing guarantee.

Illustrations.

(*a*) A, in consideration that B will employ C in collecting the rents of B's zamindari promises B to be responsible, to the amount of 5,000 rupees, for the due collection and payment by C of those rents. This is a continuing guarantee.

(*b*) A guarantees payment to B, a tea-dealer, to the amount of £100, for any tea he may from time to time supply to C. B supplies C with tea to above the value of £100, and C pays B for it. Afterwards B supplies C with tea to the value of £200. C fails to pay. The guarantee given by A was a continuing guarantee, and he is accordingly liable to B to the extent of £100.

(*c*) A guarantees payment to B of the price of five sacks of flour to be delivered by B to C and to be paid for in a month. B delivers five sacks to C. C pays for them. Afterwards B delivers four sacks to C, which C does not pay for. The guarantee given by A was not a continuing guarantee and accordingly he is not liable for the price of the four sacks.

130. A continuing guarantee may at any time be revoked by the surety, as to future transactions, by notice to the creditor.

Revocation of continuing guarantee.

Illustrations.

(*a*) A, in consideration of B's discounting, at A's request bills of exchange for C, guarantees to B, for twelve months, the due payment of all such

bills to the extent of 5,000 rupees. B discounts bills for C to the extent of 2,000 rupees. Afterwards at the end of three months, A revokes the guarantee. This revocation discharges A from all liabillity to B for any subsequent discount. But A is liable te B for the extent of 2,000 rupees, on default of C.

(*b*) A guarantees to B to the extent of 10,000 rupees, that C shall pay all the bills that B shall draw upon him. B draws upon C. C accepts the bill. A gives notice of revocation. C dishonours the bill at maturity. A is liable upon his guarantee.

Revocation of continuing guarantee by surety's death.

131. The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions.

Liability of two persons, primarily liable not affected by arrangement between them that one shall be surety on others default.

132. Where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, the liability of each of such two persons to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence.

Illustrations.

A and B make a joint and several promissory note to C. A makes it, in fact, as surety for B, and C knows this at the time when the note is made. The fact that A, to the knowledge of C, made the note as surety for B, is no answer to a suit by C against A upon the note.

Discharge of surety by variance in terms in contract.

133. Any variance, made without the surety's consent, in the terms of the contract between the principal and the creditor, discharges the surety as to transactions subsequent to the variance.

Illustrations.

(*a*) A becomes surety to C for B's conduct as a manager in C's bank. Afterwards, B and C contract, without A's consent, that B's salary shall be raised, and that he shall become liable for one-fourth of the losses on overdrafts. B allows a customer to overdraw, and the bank loses a sum of money. A is discharged from his suretyship by the variance made without his consent, and is not liable to make good this loss.

(*b*) A guarantees C against the misconduct of B in an office to which B is appointed by C, and of which the duties are defined by an Act of Legislature. By a subsequent Act, the nature of the office is materially altered. Afterwards, B misconducts himself. A is discharged by the change from future liability under his guarantee, though the misconduct of B is in respect of duty not effected by the later Act.

(*c*) C agrees to appoint B as his clerk to sell goods at a yearly salary, upon A's becoming surety to C for B's duly accounting for moneys received by him as such clerk. Afterwards, without A's knowledge or consent C and B agree

that B should be paid by a commission on the goods sold by him and not by a fixed salary. A is not liable for subsequent misconduct of B.

(*d*) A gives to C a continuing guarantee to the extent of 3,000 rupees for any oil supplied by C to B on credit. Afterwards B becomes embarrassed, and, without the knowledge of A, B and C contract that C shall continue to supply B with oil for ready money and that the payments shall be applied to the then existing debts between B and C. A is not liable on his guarantee for any goods supplied after this new arrangement.

(*e*) C contracts to lend B 5,000 rupees on the 1st March. A guarantees repayment. C pays the 5,000 rupees to B on the 1st January. A is discharged from his libility, as the contract has been varied in as much as C might sue B for the money before the 1st of March.

Discharge of surety by release or discharge of principal debtor.

134. The surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

Illustrations.

(*a*) A gives a guarantee to C for goods to be supplied by C to B. C supplies goods to B, and afterwards B becomes embarrassed and contracts with his creditors (including C) to assign to them his property in consideration of their releasing him from their demands. Here B is released from his debt by the contract with C. and A is discharged from his suretyship.

(*b*) A contracts with B to grow a crop of indigo on A's land and to deliver it to B at a fixed rate, and C guarantees A's performance of this contract. B diverts a stream of water which is necessary for irrigation of A's land and thereby prevents him from raising the indigo. C is no longer liable on his guarantee.

(*c*) A contracts with B for a fixed price to build a house for B within a stipulated time, B supplying the necessary timber. C guarantees A's performance of the contract. B omits to supply the timber. C is discharged from his suretyship.

Discharge of surety when creditor compounds with, gives time to or agrees not to sue principal debtor.

135. A contract between the creditor and the principal debtor, by which the creditor makes a composition with, or promises to give time to, or not to sue, the principal debtor, discharges the surety, unless the surety assents to such contract.

Surety not discharged when agreement made with third person to give time to principal debtor.

136. Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety, is not discharged.

Illustration.

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with M to give time to B. A is not discharged.

137. Mere forbearance on the part of the creditor to sue the principal debtor, or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

Creditor's forbearance to sue does not discharge surety.

Provided that by such forbearance the suit or remedy does not become barred by the Law of Limitation for the time being in force.

Illustration.

B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his suretyship.

138. Where there are co-sureties, a release by the creditor of one of them does not discharge the others, neither does it free the surety so released from his responsibility to the other sureties.

Release of one co-surety does not discharge others.

139. If the creditor does any act which is inconsistent with the rights of the surety, or omits to do any act which his duty to the surety requires him to do, and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged.

Discharge of surety by creditor's act or omission impairing surety's eventual remedy.

Illustrations.

(*a*) B contracts to build a ship for C for a given sum, to be paid by instalments as the work reaches certain stages. A becomes surety to C for B's due performance of the contract. C, without the knowledge of A, prepays to B the last two instalments. A is discharged by this prepayment.

(*b*) C lends money to B on the security of a joint and several promissory not made in C's favour by B, and by A as surety for B, together with a bill of sale of B's furniture, which gives power to C to sell the furniture and apply the proceeds in discharge of the note. Subseqnently, C sells the furniture, but, owing to his misconduct and wilful negligence, only a small price is realised. A is discharged from liability on the note.

(*c*) A puts M as apprentice to B, and gives a guarantee to B for M's fidelity. B promises on his part that he will, at least once a month, see M make up the cash. B omits to see this done as promised, and M embezzles. A is nor liable to B on his guarantee.

140. Where a guaranteed debt has become due, or default of the principal debtor to perform a guaranteed duty has taken place, the surety, upon payment or performance of all that he is liable for, is invested with all the rights which the creditor had against the principal debtor.

Rights of surety on payment or performance.

141. A surety is entitled to the benefit, of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not; and, if the creditor loses or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

Surety's right to benefit of creditor's securities.

Illustrations.

(*a*) C advances to B, his tenant, 2,000 rupees on the guarantee of A. C has also a further security for the 2,000 rupees by a mortgage of B's furniture, C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture.

(*b*) C, a creditor, whose advance to B is secured by a decree, receives also a guarantée for that advance from A. C afterwards takes B's goods in execution under the decree, and then, without the knowledge of A, withdraws the execution. A is discharged.

(*c*) A as surety for , makes a bond jointly with B to C, to secure a loan from C to B. Afterwards, C obtains from B a further security for the same debt Subsequently, C gives up the further security. A is not discharged.

142. Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

Guarantee obtained by misrepresentation invalid.

143. Any guarantee which the creditor has obtained by means of keeping silence as to material circumstance is invalid.

Guarantee obtained by concealment invalid.

Illustrations.

(*a*) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting A does not acquaint C with B's previous conduct. B afterwards makes default. The guarantee is invalid.

(*b*) A guarantees to C payment for iron to be supplied by him to B to the amount of 2,000 tons. B and C have privately agreed that B should pay five rupees per ton beyond the market price, such excess to be applied in liquidation of an old debt. This agreement is concealed from A. A is not liable as a surety.

144. Where a person gives a guarantee upon a contract that the creditor shall not act upon it until another person has joined in it as co-surety, the guarantee is not valid if that other person does not join.

Guarantee on contract that creditor shall not act on it until co-surety joins.

145. In every contract of guarantee there is an implied promise by the principal debtor to indemnify the surety; and the surety is entitled to recover from the principal debtor what-

Implied promise to indemnify surety.

ever sum he has rightfully paid under the guarantee, but no sums which he has paid wrongfully.

Illustrations.

(*a*) B is indebted to C, and A is surety for the debt. C demands payment from A, and on his refusal sues him for the amount. A defends the suits, having reasonable grounds for doing so, but is compelled to pay the amount of the debt with costs, He can recover from B the amount paid by him for costs, as well as the principal debt.

(*b*) C lends B a sum of money, and A, at the request of B, accepts a bill of exchange drawn by B upon A to secure the amount. C, the holder of the bill demands payment of it from A, and on A's refusal to pay, sues him upon the bill. A, not having reasonable grounds for so doing, defends the suit, and has to pay the amouut of the bill and costs. He can recover from B the amount of the bill, but not the sum paid for costs, as there was no real ground for defending the action.

(*c*) A guarantees to C, to the extent of 2,000 rupees, payment for rice to be supplied by C to B. C supplies to B rice to a less amount than 2,000 rupees, but obtains from A payment of the sum of 2,000 rupees in respect of the rice supplied. A cannot recover from B more than the price of the rice actually supplied.

Co-sureties liable to contribute equally.

146. Where two or more persons are co-sureties for the same debt or duty, either jointly or severally, and whether under the same or different contracts, and whether with or without the knowledge of each other, the co-sureties, in the absence of any contract to the contrary, are liable as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor.

Illustrations.

(*a*) A, B and C are sureties to D for the sum of 3,000 rupees lent to E. E makes default in payment. A, B and C are liable, as between themselves, to pay 1,000 rupees each.

(*b*) A, B and C are sureties to D for the sum of 1,000 rupees lent to E and there is a contract between A, B and C that A is to be responsible to the extent of one-quarter, B to the extent of one-quarter and C to the extent of one-half. E makes default in payment. As between the sureties, A is liable to pay 250 rupees, B 250 rupees, and C 500 rupees.

Liability of co-sureties bound in different sums.

147. Co-sureties who are bound in different sums are liable to pay equally as far as the limits of their respective obligations permit.

Illustrations.

(*a*) A, B and C as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 30,000 rupees. A, B and C are each liable to pay 10,000 rupees.

(*b*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly accounting to E. D makes default to the extent of 40,000 rupees. A is liable to pay 10,000 rupees, and B and C 15,000 rupees each.

(*c*) A, B and C, as sureties for D, enter into three several bonds, each in a different penalty, namely, A in the penalty of 10,000 rupees, and B in that of 20,000 rupees, C in that of 40,000 rupees, conditioned for D's duly amounting to E. D makes default to the extent of 70,000 rupees. A, B and C have to pay each the full penalty of his bond.

CHAPTER IX.

OF BAILMENT.

"Bailment," "bailer" and "Baliee" defined.

148. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee".

Explanation.—If a person already in possession of the goods of another contracts to hold them as a bailee, he thereby becomes the bailee, and the owner becomes the bailor, of such goods although they may not have been delivered by way of bailment.

Delivery to bailee how made.

149. The delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf.

Bailor's duty to disclose faults in goods bailed.

150. The bailor is bound to disclose to the bailee faults in the goods bailed, of which the bailor is aware, and which materially interfere with the use of them, or expose the bailee to extraordinary risks; and, if he does not make such disclosure, he is responsible for damage arising to the bailee directly from such faults.

If the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Illustrations.

(*a*) A lends a horse, which he knows to be vicious, to B. He does not disclose the fact that the horse is vicious. The horse runs away. B is thrown and injured. A is responsible to B for damage sustained.

(*b*) A hires a carriage of B. The carriage is unsafe, though B is not aware of it, and A is injured. B is responsible to A for the injury.

151. In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.

Care to be taken by bailee.

152. The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151.

Bailee when not liable for loss, etc. of thing bailed.

153. A contract of bailment is voidable at the option of of the bailor, if the bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment.

Termination of bailment by bailee's act inconsistent with conditions.

Illustration.

A lets to B, for hire, a horse for his own riding. B drives the horse in his carriage. This is, at the option of A, a termination of the bailment.

154. If the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Liability of bailee making unauthorised use of goods bailed.

Illustrations.

(*a*) A lends a horse to B for his own riding only. B allows C, a member of his family, to ride the horse. C rides with care, but the horse accidentally falls and is injured. B is liable to make compensation to A for the injury done to the horse.

(*b*) A hires a horse in Calcutta from B expressly to march to Benares. A rides with due care, but marches to Cuttack instead. The horse accidentally falls and is injured. A is liable to make compensation to B for the injury to the horse.

155. If the bailee, with the consent of the bailor, mixes the goods of the bailor with his own goods, the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced.

Effect of mixture, with bailor's consent, of his goods with bailees'.

156. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the goods can be separated or divided, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture.

Effect of mixture, without bailor's consent, when the goods can be separated.

Illustration.

A bails 100 bales of cotton marked with a particular mark to B. B, without A's consent, mixes the 100 bales with other bales of his own, bearing a different mark: A is entitled to have his 100 bales returned, and B is bound to bear all the expense incurred in the separation of the bales, and any other incidental damage.

Effect of mixture without bailor's consent when the goods cannot be separated.

157. If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the the bailee for the loss of the goods.

Illustration.

A bales a barrel of Cape flour worth Rs. 45 to B. B, without A's consent, mixes the flour with country flour of his own, worth only Rs. 25 a barrel. B must compensate A for the loss of his flour.

Repayment by bailor of necessary expenses.

158. Where, by the conditions of the bailment, the goods are to be kept or to be carried, or to have work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of the bailment.

Restoration of goods lent gratuitously.

159. The lender of a thing for use may at any time require its return, if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Return of goods bailed on expiration of time or accomplishment of purpose.

160. It is the duty of the bailee to return, or deliver according to the bailor's directions, the goods bailed, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed has been accomplished.

Bailee's responsibility when goods are not duly returned.

161. If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

If a bailor omits or refuses to take the goods at the proper time from the bailee who is ready and willing to deliver them, he is responsible for any necessary expenses of and incidental to their proper custody.

162. A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

Termination of gratuitous bailment by death.

163. In the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the the goods bailed.

Bailor entitled to increase or profit from goods bailed.

Illustration.

A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

164. The bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods or to give directions respecting them.

Bailor's responsibility to bailee.

165. If several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Bailment by several joint owners.

166. If the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Bailee not responsible on redelivery to bailor without title.

167. If a person, other than the bailor, claims goods bailed, he may apply to the Court to stop the delivery of the goods to the bailor, and to decide the title to the goods.

Right of third person claiming goods bailed.

168. The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner; but he may retain the goods against the owner until he receives such compensation; and, where the owner has offered a specific reward for the return of goods lost, the finder may sue for such reward, and may retain the goods until he receives it.

Right of finder of goods; may sue for specific reward offered.

When finder of thing commonly on sale may sell it.

169. When a thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses, upon demand, to pay the lawful charges of the finder, the finder may sell it—

(1) when the thing is in danger of perishing or of losing the greater part of its value, or,

(2) when the lawful charges of the finder, in respect of the thing found amount to two-thirds of its value.

Bailee's particular lien.

170. Where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them.

Illustrations.

(*a*) A delivers a rough diamond to B, a jeweller, to be cut and polished, which is accordingly done. B is entitled to retain the stone till he is paid for the services he has rendered.

(*b*) A gives cloth to B, a tailor, to make into a coat. B promises A to deliver the coat as soon as it is finished, and to give a three months' credit for the price. B is not entitled to retain the coat until he is paid.

General lien of bankers, factors, wharfingers and policy brokers.

171. Bankers, factors, wharfingers, and policy-brokers may, in the absence of a contract to the contrary, retain, as a security for a general balance of account, any goods bailed to them; but no other persons have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect.

Bailments of Pledges.

"Pledge," "pawnor" and "pawnee" defined.

172. The bailment of goods as security for payment of a debt or performance of a promise is called "pledge." The bailor is in this case called the "pawnor". The bailee is called the "pawnee".

Pawnee's right of retainor.

173. The pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

174. The pawnee shall not, in the absence of a contract to that effect, retain the goods pledged for any debt or promise other than the debt or promise for which they are pledged; but such contract, in the absence of anything to the contrary, shall be presumed in regard to subsequent advances made by the pawnee.

Pawnee not to retain for debt or promise other than that for which goods pledged.

Presumption in case of subsequent advances.

175. The pawnee is entitled to receive from the pawnor extraordinary expenses incurred by him for the preservation of the goods pledged.

Pawnee's right as to extraordinary expenses incurred.

176. If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the things pledged, on giving the pawnor reasonable notice of the sale.

Pawnee's right where pawnor makes default.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor.

177. If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default.

Defaulting pawnor's right to redeem.

178. A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: provided that the pawnee acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly:

Pledge by possessor of goods, or of documentary title to goods.

provided also that such goods or documents have not been obtained from their lawful owner, or from any person in lawful custody of them, by means of an offence or fraud.

179. Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

Pledge where pawnor has only a limited interest.

Suits by Bailees or Bailors against Wrong-doers.

Suit by bailor or bailee against wrong-doer.

180. If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury.

Apportionment of relief or compensation obtained by such suits.

181. Whatever is obtained by way of relief or compensation in any such suit shall, as between the bailor and the bailee, be dealt with according to their respective interests.

CHAPTER X.

AGENCY.

Appointment and Authority of Agents.

"Agent" and "principal" defined.

182. An "agent" is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the "principal."

Who may employ agent.

183. Any person who is of the age of majority according to the law to which he is subject, and who is of sound mind, may employ an agent.

Who may be an agent.

184. As between the principal and third persons any person may become an agent, but no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal according to the provisions in that behalf herein contained.

Consideration not necessary.

185. No consideration is necessary to create an agency.

Agent's authority may be expressed or implied.

186. The authority of an agent may be expressed or implied.

Definitions of express and implied authority.

187. An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case;

and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case.

Illustration.

A owns a shop in Serampur, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purpose of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop.

Extent of agent's authority

188. An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act.

An agent having an authority to carry on a business has authority to do every lawful thing necessary for the purpose, or usually done in the course of conducting such business.

Illustrations.

(*a*) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same.

(*b*) A constitutes B his agents to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carring on the business.

Agent's authority in an emergency.

189. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

Illustrations.

(*a*) An agent for sale may have goods repaired if it be necessary.

(*b*) A consigns provisions to B at Calcutta, with directions to send them immediately to C at Cuttack, B may sell the provisions at Calcutta, if they will not bear the journey to Cuttack without spoiling.

Sub-agents.

When agent cannot delegate.

190. An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally, unless by the ordinary custom of trade a sub-agent may, or, from the nature of the ageney, a sub-agent must, be employed.

"Sub-agent" defined.

191. A "sub-agent" is a person employed by, and acting under the control of, the original agent in the business of the agency.

Representation of principal by sub-agent properly appointed.

192. Where a sub-agent is properly appointed the principal is, so far as regards third persons, represented by the sub-agent, and is bound by and responsible for his acts, as if he were an agent originally appointed by the principal.

Agent's responsibility for sub-agent.

The agent is responsible to the principal for the acts of the sub-agent.

Sub-agent's responsibility.

The sub-agent is responsible for his acts to the agent, but not to the principal, except in case of fraud or wilful wrong.

Agent's responsibility for sub-agent appointed without authority.

193. Where an agent, without having authority to do so, has appointed a person to act as a sub-agent, the agent stands towards such person in the relation of a principal to an agent, and is responsible for his acts both to the principal and to th rd persons; the principal is not represented by or responsible for the acts of the person so employed, nor is that person responsible to the principal.

Relation between principal and person duly appointed by agent to act in business of agency.

194. Where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Illustrations.

(*a*) **A** directs **B**, his solicitor, to sell his estate by auction, and to employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub-agent, but is **A**'s agent for the conduct of the sale.

(*b*) **A** authorises B, a merchant in Calcutta, to recver the moneys due to **A** from C and Co. B instructs D, a solicitor, to take legal proceedings against C and Co. for the recovery of the money. D is not a sub-agent, but is solicitor for **A**.

Agent's duty in naming such person.

195. In selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and if he does this he is not responsible to the principal for the acts or negligence of the agent so selected.

Illustrations.

(*a*) **A** instructs **B**, a merchant, to buy a ship for him. B employs a ship surveyor of good reputation to choose a ship for **A**. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. B is

not, but the surveyor, is responsible to A.

(*b*) A consigns goods to B, a merchant, for sale. B, in due course, employs an auctioneer in good credit to sell the goods of A, and allows the auctioneer to receive the proceeds of the sale. The auctioneer afterwards becomes insolvent without having accounted for the proceeds. B is not responsible to A for the proceeds.

Ratification.

Right of person as to acts done for him without his authority. Effect of ratification.

196. Where acts are done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratify them, the same effects will follow as if they had been performed by his authority.

Ratification may be expressed or implied.

197. Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

Illustrations.

(*a*) A without authority, buys goods for B. Afterwards B sells them to C on his own account; B's conduct implies a ratification of the purchase made for him by A.

(*b*) A, without B's authority, lends B's money to C. Afterwards B accepts interests on the money from C. B's conduct implies a ratification of the loan.

Knowledge requisite for valid ratification.

198. No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective.

Effect of ratifying unauthorised act forming part of a transaction.

199. A person ratifying any unauthorised act done on his behalf ratifies the whole of the transactions of which such act formed a part.

Ratification of authorised act cannot injure third person.

200. An act done by one person on behalf of another, without such other person's authority, which, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect.

Illustrations.

(*a*) A, not being authorised thereto by B, demands on behalf of B, the delivery of a chattel, the property of B, from C, who is in possession of it. This demand cannot be ratified by B, so as to make C liable for damages for his refusal to deliver.

(*b*) A holds a lease from B, terminable on three months' notice. C an authorised person, gives notice of termination to A. The notice cannot be ratified by B, so as to be binding on A.

Revocation of authority.

201. An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act, for the time being in force for the relief of insolvent debtors.

Termination of agency.

202. Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

Termination of agency, where agent has an interest in subject-matter.

Illustrations.

(*a*) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke his authority, nor can it be terminated by his insanity or death.

(*b*) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price, the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.

203. The principal may, save as is otherwise provided by the last preceding section, revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal.

When principal may revoke agent's authority.

204. The principal cannot revoke the authority given to his agent after the authoriy has neen partly exercised so far as regards such acts and obligations as arise from acts already done in the agency.

Revocation where authority has been partly exercised.

Illustrations.

(*a*) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's money remaining in B's hands. B buys 1,000 bales of cotton in his own name, so as to make himself personally liable for the price. A cannot revoke B's authority so far as regards payment for the cotton.

(b) A authorises B to buy 1,000 bales of cotton on account of A, and to pay for it out of A's moneys remaining in B's hands. B buys 1,000 bales of cotton in A's name and so as not to render himself personally liable for the price. A can revoke B's authority to pay for the cotton.

205. Where there is an express or implied contract that the agency should be continued for any period of time, the principal must make compensation to the agent, or the agent to the principal, as the case may be, for any previous revocation or renunciation of the agency without sufficient cause.

Compensation for revocation by principal or renunciation by agent.

206. Reasonable notice must be given of such revocation or renunciation; otherwise the damage thereby resulting to the principal or the agent, as the case may be, must be made good to the one by the other.

Notice of revocation or renunciation.

207. Revocation and renunciation may be expressed or may be implied in the conduct of the principal or agent respectively.

Revocation and renunciation may be expressed or implied.

Illustration.

A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

208. The termination of the authority of an agent does not, so far as regards the agent, take effect before it becomes known to him, or, so far as regards third persons, before it becomes known to them.

When termination of agent's authority takes effect as to agent, and as to third persons.

Illustrations.

(*a*) A directs B to sell goods for him, and agrees to give B five per cent. commission on the price fetched by the goods. A afterwards, by letter, revokes B's authority. B, after the letter is sent, but before he receives it, sells the goods for 100 rupees. The sale is binding on A, and B is entitled to five rupees as his commission.

(*b*) A, at Madras, by letter directs B to sell for him some cotton lying in a warehouse in Bombay, and afterwards, by letter, revokes his authority to sell, and directs B to send the cotton to Madras. B, after receiving the second letter, enters into a contract with C, who knows of the first letter, but not of the second, for the sale to him of the cotton, C pays B the money, with which B absconds. C's payment is good as against A.

(*c*) A directs B, his agent, to pay certain money to C. A dies and D takes out probate to his will. B, after A's death, but before hearing of it, pays the money to C. The payment is good as against D, the executor.

209. When an agency is terminated by the principal dying or becoming of unsound mind, the agent is bound to take, on behalf of the representatives of his late principal, all reasonable steps for the protection and preservation of the interests entrusted to him.

Agent's duty on termination of agency by principal's death or insanity.

210. The termination of the authority of an agent causes the termination (subject to the rules herein contained regarding the termination of an agent's authority) of the authority of all sub-agents appointed by him.

Termination of sub-agent's authority.

Agents' Duty to Principal.

21. An agent is bound to conduct the business of his principal according the directions given by the principal, or in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

Agent's duty in conducting principal's business.

Illustrations.

(*a*) A, an agent engaged in carrying on for B a business, in which it is the custom to invest from time to time, at interest, the moneys which may be in hand, omits to make such investment. A must make good to B the interest usually obtained by such investments.

(*b*) B, a broker, in whose business it is not the custom to sell on credit, sells goods of A on credit to C, whose credit at the time was very high. C, before payment, becomes insolvent. B must make good the loss to A.

212. An agent is bound to conduct the business of the agency with as much skill as is generally possessed by persons engaged in similar business, unless the principal has notice of his want of skill. The agent is always bound to act with reasonable diligence, and to use such skill as he possesses; and to make compensation to his principal in respect of the direct consequences of his own neglect, want of skill or misconduct, but not in respect of loss or damage which are indirectly or remotely caused by such neglect, want of skill or misconduct.

Skill and diligence required from agent.

Illustrations.

(*a*) A, a merchant in Calcutta, has an agent, B, in London to whom a sum of money is paid on A's account, with orders to remit. B retains the money for a considerable time. A, in consequence of not receiving the money, becomes insolvent. B is liable for the money and interest from the day on which it ought to have been paid, according to the usual rate, and for any further direct loss—as *e. g.*, by variation of rate of exchange—but not further.

(*b*) A, an agent for the sale of goods, having authority to sell on credit, sells to B on credit, without making the proper and usual enquiries as to the solvency of B. B, at the time of such sale, is insolvent. A must make compensation to his principal in respect of any loss thereby sustained.

(*c*) A, an insurance-broker employed by B to effect an insurance on a ship omits to see that the usual clauses are inserted in the policy. The ship is afterwards lost. In consequence of the omission of the clauses nothing can be recovered from the underwriters. A is bound to make good the loss to B.

(*d*) A, merchant in England, directs B, his agent at Bombay, who accepts the the agency, to send him 100 bales of cotton by a certain ship. B, having it in his power to send the cotton, omits to do so. The ship arrives safely in England. Soon after her arrival the price of cotton rises. B is bound to make good to A the profit which he might have made by the 100 bales of cotton at the time the ship arrived, but not any profit he might have made by the subsequent rise.

Agent's accounts.

213. An agent is bound to render proper accounts to his principal on demand.

Agent' duty to communicate with principal.

214. It is the duty of an agent, in cases of difficulty, to use all reasonable diligence in communicating with his principal, and in seeking to obtain his instruction.

Right of principal when agent deals on his own account, in business of agency without pricipal's consent.

215. If an agent deals on his own account in the business of the agency, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly conecealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustration.

(*a*) A directs B to sell A's estate. B buys the estate for himself in the name of C. A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him.

(*b*) A directs B to sell A's estate. B, on looking over the estate before selling it finds a mine on the estate which is unknown to A. B informs A that he wishes to buy the estate for himself, but conseals the discovery of the mine. A allows B to buy, in ignorance of existance of mine. A, on discovering that B knew of the the mine at the time he bought the estate, may either repudiate or adopt the sale at his option.

Principal's right to benefit gained by agent dealing on his own account in business of agency.

216. If an agent, without the knowledge of his principal, deals in the business of the agency on his own account instead of on account of his principal, the principal is entitled to claim from the agent any benefit which may have resulted to him from the transaction.

Illustration.

A directs B, his agent, to buy a certain house for him. B tells A it cannot be bought, and buys the house for himself. A may, on discovering that B has bought the house, compel him to sell it to A at the price he gave for it.

217. An agent may retain, out of any sums received on account of the principal in the business of the agency, all moneys due to himself in respect of advances made or expenses properly incurred by him in conducting such business, and also such remuneration as may be payable to him for acting as agent.

Agent's right of retainer out of sums received on principal's account.

218. Subject to such deductions, the agent is bound to pay to his principal all sums received on his account.

Agent's duty to pay sums received for principal.

219. In the absence of any special contract, payment for the performance of any act is not due to the agent until the completion of such act; but an agent may detain moneys received by him on account of goods sold, although the whole of the goods consigned to him for sale may not have been sold, or although the sale may not be actually complete.

When agent's remuneration becomes due.

220. An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of that part of the business which he has misconducted.

Agent not entitled to remuneration for business misconducted.

Illustrations.

(*a*) A employed B to recover 1,00,000 rupees from C, and to lay it out on good security. B recovers the 1,00,000 rupees and lays out 90,000 rupees on good security, but lays out 10,000 rupees in security which he ought toh ave known to be bad, whereby A loses 2,000 rupees. B is entitled to remuneration for recovering the 1,00,000 rupees and for investing the 90,000 rupees. He is not entitled to any remuneration for investing the 10,000 rupees, and he must make good the 2,000 rupees to B.

(*b*) A employs B to recover 1,000 rupees from C. Through B's misconduct the money is not recovered. B is entitled to no remuneration for his services, and must make good the loss.

221. In the absence of any contract to the contrary, an agent is entitled to retain goods, papers and other property, whether moveable or immoveable, of the principal received by him, until the amount due to himself for commission, disbursements and services in respect of the same has been paid or accounted for to him.

Agent's lien on principal's property.

Principal's Duty to Agent.

222. The employer of an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the authority conferred upon him.

Agent to be indemnified against consequences of lawful acts.

Illustrations.

(*a*) B, at Singapur, under instructions from A of Calcutta, contracts with C to deliver certain goods to him. A does not send the goods to B, and C sues B for breach of contract. B informs A of the suit, and A authorises him to defend the suit. B defends the suit, and is compelled to pay damages, and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

(*b*) B, a broker at Calcutta, by the orders of A, a merchant there, contracts with C for the purchase of 10 casks oil for A. Afterwards A refuses to receive the oil, and C sues B. B informs A, who repudiates the contract altogether. B defends, but unsuccessfully, and has to pay damages and costs and incurs expenses. A is liable to B for such damages, costs and expenses.

223. Where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons.

Agent to be indemnified against consequences of acts done in good faith.

Illustrations.

(*a*) A, a decree-holder and entitled to execution of B's goods requires the officer of the Court to seize certain goods, representing them to be the goods of B. The officer seizes the goods, and is sued by C, the true owner of the goods. A is liable to indemnify the officer for the sum which he is compelled to pay to C, in consequence of obeying A's directions.

(*b*) B, at request of A, sells goods in the possession of A, but which A had no right to dispose of. B does not know this, and hands over the proceeds of the sale to A. Afterwards C, the true owner of the goods, sues B and recovers the value of the goods and costs. A is liable to indemnify B for what he has been compelled to pay to C and for B's own expenses.

224. Where one person employs another to do an act which is criminal, the employer is not liable to the agent, either upon an express or an implied promise, to indemnify him against the consequences of that act.

Non-liability of employer of agent to do a criminal act.

Illustrations.

(*a*) A employs B to beat C, and agrees to indemnify him against all consequences of the act. B thereupon beats C, and has to pay damages to C for so doing. A is not liable to indemnify B for those damages.

(*b*) B, the proprietor of a newspaper, publishes, at A's request, a libel upon C in the paper, and A agrees to indemnify B against the consequences of the publication and all costs and damages of any action in respect thereof. B is sued by C and has to pay damages, and also incurs expenses. A is not liable to B upon the indemnity.

225. The principal must make compensation to his agent in respect of injury caused to such agent by the principal's neglect or want of skill.

Compensation to agent for injury caused by principal's neglect.

Illustration.

A employs B as a bricklayer in building a house, and puts up the scaffolding himself. The scaffolding is unskilfully put up, and B is in consequence hurt. A must make compensation to B.

Effect of agency on contract with third persons.

Enforcement and consequences of agent's contracts.

226. Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Illustrations.

(*a*) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B.

(*b*) A, being B's agent with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B.

Principal how far bound when agent exceeds authority.

227. When an agent does more than he is authorised to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority, is binding as between him and his principal.

Illustration.

A, being owner of ship and cargo, authorises B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo.

Principal not bound when excess of agent's authority is not separable.

228. When an agent does more than he is authorised to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognise the transaction.

Illustration.

A authorises B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction.

Consequence of notice given to agent.

229. Any notice given to or information obtained by the agent, provided it be given or obtained in the course of the business transacted by him for the principal, shall, as between

the principal and third parties, have the same legal consequence as if it had been given to or obtained by the principal.

Illustrations.

(*a*) A is employed by B to buy from C certain goods, of which C is the apparent owner, and buys them accordingly. In the course of the treaty for the sale, A learns that the goods really belonged to D, but B is ignorant of that fact. B is not entitled to set-off a debt owing to him from C against the price of the goods.

(*b*) A is employed by B to buy from C goods of which C is the apparent owner. A was, before he was so employed, a servant of C, and then learnt that the goods really belonged to D, but B is ignorant of that fact. In spite of the knowledge of his agent, B may set-off against the price of the goods a debt owing to him from C.

Agent cannot personally enforce, nor be bound by contracts on behalf of principal.

Presumption of contract to contrary.

230. In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them.

Such a contract shall be presumed to exist in the following cases:—

(1) Where the contract is made by an agent for the sale or purchsae of goods for a merchant resident abroad:

(2) Where the agent does not disclose the name of his his principal:

(3) Where the principal, though disclosed, cannot be be sued.

Rights of parties to a contract made by agent not disclosed.

231. If an agent makes a contract with a person who neither knows, nor has reason to suspect, that he is an agent, his principal may require the performance of the contract; but the other contracting party has, as against the principal, the same rights as he would have had as against the agent if the agent had been principal.

If the principal discloses himself before the contract is completed, the other contracting party may refuse to fulfil the contract, if he can show that, if he had known who was the principal in the contract, or if he had known that the agent was not a principal, he would not have entered into the contract.

Performance of contract with agent supposed to be principal.

232. Where one man makes a contract with another, neither knowing nor having reasonable ground to suspect that the other is an agent, the principal, if he requires the performance of the contract, can only obtain such performance subject to the rights and obligations subsisting between the agent and the other party to the contract.

Illustration.

A, who owes 500 rupees to B, sells 1,000 rupees' worth of rice to B. A is acting as agent for C in the transaction, but B has no knowledge nor reasonable ground of suspicion that such is the case. C cannot compel B to take the rice without allowing him to set-off A's debt.

233. In cases where the agent is personally liable, a person dealing with him may hold either him or his principal, or both of them liable.

Right of person dealing with agent personally liable.

Illustration.

A enters into a contract with B to sell him 100 bales of cotton, and afterwards discovers that B was acting as agent for C. A may sue either B or C, or both, for the price of the cotton.

234. When a person who has made a contract with an agent induces the agent to act upon the belief that the principal only will be held liable, or induces the principal to act upon the belief that the agent only will be held liable, he cannot afterwards hold liable the agent or principal respectively.

Consequence of inducing agent or principal to act on belief that principal or agent will be held exclusively liable.

235. A person untruly representing himself to be the authorised agent of another, and thereby inducing a third person to deal with him as such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Liability of pretended agent.

236. A person with whom a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Person falsely contracting as agent not entitled to performance.

237. When an agent has, without authority, done acts or incurred obligations to third persons on behalf of his principal, the principal is bound by such acts or obligations if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

Liability of principal inducing belief that agent's unauthorised acts were authorised.

Illustrations.

(a) A consigns goods to B for sale and gives him instructions not to sell under a fixed price. C, being ignorant of B's instructions, enters into a contract

with B to buy the the goods at a price lower than the reserved price. A is bound by the contract.

(*b*) A entrusts B with negotiable instruments endorsed in blank. B sells them to C in violation of private orders from A. The sale is good.

Effect on agreement, of misrepresentation or fraud by agent.

238. Misrepresentations made, or frauds committed; by agents acting in the course of their business for their principals, have the same effect on agreements made by such agents as if such misrepresentations or frauds had been made or committed by the principals; but misrepresentations made, or frauds committed by agents, in matters which do not fall within their authority, do not affect their principals.

Illustrations.

(*a*) A being B's agent for the sale of goods, induces C to buy them by a misrepresentation, which he was not authorised by B to make. The contract is voidable, as between B and C, at the option of C.

(*b*) A, the captain of B's ship signs bills of lading without having received on board the goods mentioned therein. The bills of lading are void as between B and the pretended consignor.

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[1]CHAPTER XI.

OF PARTNERSHIP.
Sections 239-266. } Repealed.

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[1]Chapter XI, sections, 239-266 repealed *vide* Act V of 1996 published in Government Gazette dated 26th Sawan 1996.

THE CODE OF CIVIL PROCEDURE, 1971.

Act No. X of 1977.

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THE CODE OF CIVIL PROCEDURE, 1977.

Act No. X of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's Endorsement No. 8372, dated 11th September, 1920 and State Council Resolution No. 1, dated 8th April 1925, (notification No.14-L/81)*].

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

PRELIMINARY.

1. [1][(i) This Act may be cited as Code of Civil Procedure (Act X of 1977).

(ii) It extends to the whole of Jammu and Kashmir State.]

2. In this Act, unless there is anything repugnant in the subject or context,—

[Definition.

(1) "Code" includes rules:

(2) "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary, or final. It shall be deemed to include the rejection of a plaint and the determination of any question within section 47 or section 144, but shall not include—

(a) any adjudication from which an appeal lies as an appeal from an order, or

(b) any order of dismissal for default.

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

(3) "decree-holder" means any person in whose favour a decree has been passed or an order capable of execution has been made:

[1]Section 1 was inserted vide Act VI of 1995, published in Government Gazette dated 17th Mar 1995.

(4) "district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court").

(5) "foreign Court" means a Court not established or continued by His Highness:

Explanation.—The Residency Court is a foreign Court within the meaning of this definition:

(6) "foreign judgement" means the judgment of a foreign Court:

(7) "Government Pleader" includes any officer appointed by [1][the Government] to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader:

(8) "Judge" means the presiding officer of a Civil Court:

(9) "judgment" means the statement given by the Judge of the grounds of a decree or order:

(10) "judgment-debtor" means any person against whom a decree has been passed or an order capable of execution has been made:

(11) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.

(12) "mesne profits" of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession:

(13) "moveable property" includes growing crops:

(14) "order" means the formal expression of any decision of a Civil Court which is not a decree:

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and [2][an attorny of the High Court].

(16) "prescribed" means prescribed by rules:

(17) "public officer" means a person falling under any of the following descriptions, namely:—

(a) every judge;

(b) omitted;

[1]In sections 2 (7), 5 ( ), 55, 57, 59 (3), 61, 67, 68, 70, 82, 92, 137, 139 and 143 the words "the Government" substituted for the words "His Highness" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

[2]Inserted *vide* notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

(c) every commissioned or gazetted officer in the military forces of His Highness;

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the Court, and every person especially authorised by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinment;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty.

(18) "rules" means rules and forms contained in the First Schedule or made under section 122:

(19) "share in a corporation" shall be deemed to include stock, debenture stock, debentures or bonds: and

(20) "signed," save in the case of a judgment or decree, includes stamped.

Subordination of Courts.

3. For the purposes of this Code, the District Court is subordinate to the High Court, and every Civil Court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court.

Savings.

4. (1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this

Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.

Application of the Code to Revenue Courts.

5. (1) Where any Revenue Courts are governed by the provisions of this Code in those matters of procedure upon which any special enactment applicable to them is silent, [1][the Government] may, by notification in the Government Gazette, declare that any portions of those provisions which are not expressly made applicable by this Code shall not apply to those Courts, or shall only apply to them with such modifications as [1][the Government] may prescribe.

(2) "Revenue Court" in sub-section (1) means a Court having jurisdiction under any local law to entertain suits or other proceedings relating to the rent, revenue or profits of land used for agricultural purposes, but does not include a Civil Court having original jurisdiction under this Code to try such suits or proceedings as being suits or proceedings of a civil nature.

Pecuniary jurisdiction.

6. Save in so far as is otherwise expressly provided, nothing herein contained shall operate to give any Court jurisdiction over suits the amount or value of the subject-matter of which exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Small Cause Courts.

7. The following provisions shall not extend to Courts constituted under the Small Causes Court Act, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say,—

(a) so much of the body of the Code as relates to—

(i) suits excepted from the congizance of Court of Small Causes;

(ii) the execution of decrees in such suits;

(iii) the execution of decrees against immoveable property; and

(b) the following sections, that is to say,—

section 9,

sections 91 and 92,

sections 94 and 95 so far as they [2][authorise or relate to:—

(i) orders for the attachment of immoveable property;

(ii) injunctions;

(iii) the appointment of a reciever of immoveable property; or

[1]See footnote under section 2 (7).

[2]Substituted *vide* Act IX of 1988 published in Government Gazette dated 18th Har 1988, for the words "so far as they relate to injunctions and interlocutory orders".

(iv) the interlocutory orders referred to in clause (c) of section 94], and

sections 96 to 112 and 115.

8. Omitted.

PART I.

SUITS IN GENERAL.

Jurisdiction of the Courts and Res Judicata.

Courts to try all civil suits unless barred.

9. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suit of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Stay of suit.

10. No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in the State having jurisdiction to grant the relief claimed.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in the State from trying a suit founded on the same cause of action.

Res judicata.

11. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate *bona fide* in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—Where a party to a civil suit, sets up or relies on a pedigree, or on the legitimacy or the genuineness or validity of the adoption of any person, including himself and the question of such pedigree legitimacy or adoption is put directly or substantially in issue, and is, after a full and regular trial, decided against such party, then as regards such question or issue the party's descendants, heirs, executors, administrators or assigns shall in any future litigation be deemed to claim under him.

Explanation VIII.—Where a party to a suit claims certain immoveable property to be his and the Court decides that it is not his, such decision shall be binding on him and those claiming under him, in any future litigation in which he or they claim as plaintiff or applicant or plaintiffs or applicants the property as against a person or persons in possession or occupation of it.

Bar to further suit.

12. Where a plaintiff is precluded by rules from instituting a further suit in respect of any particular cause of action, he shall not be entitled to institute a suit in respect of such cause of action in any Court to which this Code applies.

When foreign judgment not conclusive.

13. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except—

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a re-

fusal to recognise the law of the State in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in the State:

Presumption as to foreign judgments.

14. The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Place of Suing.

Court in which suits to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits—

(a) for the recovery of immoveable property with or without rent or profits,

(b) for the partition of immoveable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immoveable property,

(d) for the determination of any other right to or interest in immoveable property,

(e) for compensation for wrong to immoveable property,

(f) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section "property" means property situate in the State.

Suits for immoveable property situate within jurisdiction of different Courts.

17. Where a suit is to obtain relief respecting, or compensation for wrong to, immoveable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

18. (1) Where it is alleged to be uncertain within the local limits of the jurisdiction of which of two or more Courts any immoveable property is situate, any one of those Courts may, if satisfied that there is ground for the alleged uncertainty, record a statement to that effect and thereupon proceed to entertain and dispose of any suit relating to that property, and its decree in the suit shall have the same effect as if the property were situate within the local limits of its jurisdiction:

Provided that the suit is one with respect to which the Court is competent as regards the nature and value of the suit to exercise jurisdiction.

(2) Where a statement has not been recorded under sub-section (1), and an objection is taken before an appellate or revisional Court that a decree or order in a suit relating to such property was made by a Court not having jurisdiction where the property is situate, the appellate or revisional Court shall not allow the objection unless in its opinion there was, at the time of the institution of the suit, no reasonable ground for uncertainty as to the Court having jurisdiction with respect thereto and there has been a consequent failure of justice.

Suit for compensation for wrongs to person or moveables.

19. Where a suit is for compensation for wrong done to the person or to moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the suit may be instituted at the option of the plaintiff in either of the said Courts.

Illustrations.

(*a*) A, residing in Delhi, beats B in Calcutta, B may sue A either in Calcutta or in Delhi.

(*b*) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B, may sue A either in Calcutta or in Delhi.

20. Subject to the limitations aforesaid, every suit shall be instituted in a Court within the local limits of whose jurisdiction—

Other suits to be instituted where defendants reside or cause of action arises.

(a) the defendant, or each of the defendants where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain; or

(b) any of the defendants, where there are more than one, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, provided that in such case either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

Explanation I.—Where a person has a permanent dwelling at one place and also a temporary residence at another place, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary residence.

Explanation II.—A corporation shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a suboridnate office, at such place.

Illustrations.

(*a*) A is a tradesman in Calcutta, B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action, or in Delhi, where B carries on business.

(*b*) A resides at Simla, B at Calcutta and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides, but in each of these cases, if the non-resident defendant objects, the suit cannot proceed without the leave of the Court.

21. No objection as to the place of suing shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

Objections to jurisdiction.

Power to transfer suits which may be instituted in more then one Court.

22. Where a suit may be instituted in any one of two or more Courts and is instituted in one of such Courts, and defendant, after notice to the other parties, may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to have the suit transferred to another Court, and the Court to which such application is made, after considering the objections of the other parties (if any), shall determine in which of the several Courts having jurisdiction the suit shall proceed.

To what Court application lies.

23. (1) Where the several Courts having jurisdiction are subordinate to the same appellate Court, an application under section 22 shall be made to the Appellate Court.

(2) Where such Courts are subordinate to different Appellate Courts the application shall be made to the High Court.

General power of transfer and withdrawal.

24. (1) On the application of any of the parties and after notice to the parties and after hearing such of them as desire to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which thereafter tries such suit may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section, Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

25. Omitted.

Institution of Suits.

26. Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

Institution of suits.

Summons and Discovery.

27. Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed.

Summons to defendants.

28. Omitted.

[1]**29.** Deleted.

30. Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

Power to order discovery and the like.

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit.

31. The provisions in section 27 shall apply to summonses to give evidence or to produce documents or other material objects.

Summons to witness.

32. The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

Penalty for default.

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him not exceeding five hundred rupees;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

Judgement and Decree.

33. The Court, after the case has been heard, shall pronounce judgment, and on such judgment a decree shall follow.

Judgment and decree

[1]Section 29 deleted *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Interest.

Interest.

34. (1) Where and in so far as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

(2) Where such a decree is silent with respect to the payment of further interest on such aggregate sum as aforesaid from the date of the decree to the date of payment or other earlier date, the Court shall be deemed to have refused such interest, and a separate suit therefor shall not lie.

Costs.

Costs.

35. (1) Subject to such conditions and limitations as may be prescribed, and to the provisions of any law for the time being in force, the costs of and incident to all suits shall be in the discretion of the Court, and the Court shall have full power to determine by whom or out of what property and to what extent such costs are to be paid, and to give all necessary directions for the purposes aforesaid. The fact that the Court has no jurisdiction to try the suit shall be no bar to the exercise of such powers.

(2) Where the Court directs that any costs shall not follow the event, the Court shall state its reasons in writing.

(3) The Court may give interest on costs at any rate not exceeding six per cent. per annum, and such interest shall be added to the costs and shall be recoverable as such.

Compensatory costs in respect of false or vexatious claims or offences.

[1]**35-A.** (1) If in any suit or other proceeding, not being an appeal, any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part the Court, if the objection has been taken at the earliest opportunity and if it is satisfied of the justice thereof, may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order

[1]Section 35-A inserted *vide* Act IV of 1968 published in Government Gazette dated 15th Mar 1968.

for the payment to the objector, by the party by whom such claim or defence has been put forward, of costs by way of compensation.

(2) No court shall make any such order for the payment of an amount exceeding one thousand rupees or exceeding the limits of its pecuniary jurisdiction whichever amount is less:

Provided that where the pecuniary limits of the jurisdiction of any court exercising the jurisdiction of a Court of Small Causes under the Small Cause Courts Act, 1968, and not being a court constituted under that Act are less than two hundred and fifty rupees, the High Court may empower such court to award, as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees:

Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.

(3) No person against whom any order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.

(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.

PART II.

EXECUTION.

General.

Application to orders.

36. The provisions of this Code relating to the execution of decrees shall, so far as they are applicable, be deemed to apply to the execution of orders.

Definition of Court which passed a decree.

37. The expression "Court which passed a decree," or words to that effect, shall, in relation to the execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,—

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time

of making the application for the execution of the decree, would have jurisdiction to try such suit.

Court by which decrees may be executed.

Court by which decree may be executed.

38. A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

Transfer of decree.

39. (1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,—

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

40. Omitted.

Result of execution proceedings to be certified.

41. The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same, the circumstances attending such failure.

Powers of Court in executing transferred decree.

42. The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Executions of decrees of State Court in Poonch and *vice versa*.

43. A decree passed by a State Court may be executed in [1][* * *] Poonch and *vice versa*.

[1]In section 43 words "Bbadarwah or" deleted *vide* Act II of 1997 published in Government Gazette dated 21st Baisakh, 1997.

Execution of decrees passed by Courts in British India or States.

44. His Highness may, by notification in the Government Gazette, declare that the decrees of any Civil or Revenue Courts situate in British India or of any Court established or continued by the authority of the Governor-General in Council outside British India or of any Court in the territories of any Indian Prince or State in alliance with His Majesty and not established or continued by the authority of the Governor-General in Council, or any class of such decrees, may be executed in the State as if they had been passed by the Courts of the State and in the manner herein provided.

Execution of decrees in foreign territory.

45. So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in the State to send a decree for execution to any Court in British India or established or continued by the authority of the Governor-General in Council in the territories of any Indian Prince or State to which the Governor-General in Council has, by notification in the Gazette of India, declared the provisions contained in this section to apply or to any Court established by the authority of any Indian Prince or State to which the Indian Prince or State concerned has declared the provisions contained in this section to apply.

Precepts.

46. (1) Upon the application of the decree-holder the Court which passed the decree may, whenever it thinks fit, issue a precept to any other Court which would be competent to execute such decree to attach any property belonging to the judgment-debtor and specified in the precept.

(2) The Court to which a precept is sent shall proceed to attach the property in the manner prescribed in regard to the attachment of property in execution of a decree:

Provided that no attachment under a precept shall continue for more than two months unless the period of attachment is extended by an order of the Court which passed the decree or unless before the determination of such attachment the decree has been transferred to the Court by which the attachment has been made and the decree-holder has applied for an order for the sale of such property.

Questions to be determined by Court executing Decree.

Questions to be determined by the Court executing decree.

47. (1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the

decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) The Court may, subject to any objection as to limitation or jurisdiction, treat a proceeding under this section as a suit or a suit as a proceeding and may, if necessary, order payment of any additional court-fees.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation.—For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed, are parties to the suit.

Limit of time for execution.

Execution barred in certain cases.

48. (1) Where an application to execute a decree not being a decree granting an injunction has been made, no order for the execution of the same decree shall be made upon any fresh application presented after the expiration of twelve years from—

(a) the date of the decree sought to be executed, or,

(b) where the decree or any subsequent order directs any payment of money or the delivery of any property to be made, at a certain date or at recurring periods, the date of the default in making the payment or delivery in respect of which the applicant seeks to execute the decree.

(2) Nothing in this section shall be deemed—

(a) to preclude the Court from ordering the execution of a decree upon an application presented after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application; or

(b) Omitted.

Transferees and legal representatives.

Transferee.

49. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Legal representative.

50. (1) Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

(2) Where the decree is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel such legal representative to produce such accounts as it thinks fit.

Procedure in execution.

Powers of Court to enforce execution.

51. Subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree—

(a) by delivery of any property specifically decreed;

(b) by attachment and sale or by sale without attachment of any property;

(c) by arrest and detention in prison;

(d) by appointing a receiver; or

(e) in such other manner as the nature of the relief granted may require.

[1][Provided that where the decree is for the payment of money execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing is satisfied—

(a) that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree;

(i) is likely to abscond or leave the local limits of the jurisdiction of the court, or

(ii) has, after the institution of the suit or within one year prior to such institution in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property or

(b) that the judgment-debtor has or has had since the date of the decree the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation.—In the calculation of the means of the judgment-debtor for the purposes of clause (b) there shall be left out of account any property which by or under any law

[1] Proviso to section 51 added *vide* Act VI of 1995 published in Government Gazette dated 17th Mar 1995.

or custom having the force of law for the time being in force is exempt from attachment in execution of the decree.]

Enforcement of decree against legal representative.

52. (1) Where a decree is passed against a party as the legal representative of a deceased person, and the decree is for the payment of money out of the property of the deceased, it may be executed by the attachment and sale of any such property.

(2) Where no such property remains in the possession of the judgment-debtor and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property in respect of which he has failed so to satisfy the Court in the same manner as if the decree had been against him personally.

Liability of ancestral property.

53. For the purposes of section 50 and section 52, property in the hands of a son or other descendant which is liable under Hindu law for the payment of the debt of deceased ancestor, in respect of which a decree has been passed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

Partition of estate or separation of share.

54. Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estate.

Arrest and detention.

Arrest and detention.

55. (1) A Judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable, be brought before the Court, and his detention may be in the civil prison of the district in which the Court ordering the detention is situate, or, where such civil prison does not afford suitable accommodation, in any other place which [1][the Government] may appoint for the detention of persons ordered by the Courts of such district to be detained:

Provided, firstly, that, for the purpose of making an arrest under this section no dwelling-house shall be entered after sunset and before sunrise:

[1]See footnote under section 2 (7).

Provided, secondly, that no outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the officer authorised to make the arrest has duly gained access to any dwelling-house, he may break open the door of any rooms in which he has reason to believe the judgment-debtor is to be be found:

Provided, thirdly, that, if the room is in the actual occupancy of a woman who is not the judgement-debtor and who according to the customs of the country does not appear in public, the officer authorised to make the arrest shall give notice to her that she is at liberty to withdraw, and after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, may enter the room for the purpose of making the arrest:

Provided, fourthly, that, where the decree in execution of which a judgment debtor is arrested, is a decree for the payment of money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

(2) [1][The Government] may, by notification in the Government Gazette, declare that any person or class of persons whose arrest might be attended with danger or inconvenience to the public shall not be liable to arrest in execution of a decree otherwise than in accordance with such procedure as may be prescribed by [1][the Government] in this behalf.

(3) Where a judgment-debtor is arrested in execution of a decree for the payment of money and brought before the Court, the Court shall inform him that he may apply under the law for the relief of insolvent judgment-debtor under the law and that he will be discharged if he has not committed any act of bad faith regarding the subject of the application and if he complies with the provisions of the law of insolvency for the time being in force.

[2](4) Repealed.

Prohibition of arrest or detention of women in execution of decree for money.

56. Notwithstanding anything in this Part, the Court shall not order the arrest or detention in the civil prison of a woman in execution of a decree for the payment of money.

Subsistance allowance.

57. [1][The Government] may fix scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistance of judgment-debtors.

[1]See footnote under section 2 (7).

[2]Repealed *vide* Act IV of 1988 published in Government Gazette dated 18th Mar 1988.

58. (a) Every person detained in the civil prison in execution of a decree shall be so detained,

Detention and release.

(a) where the decree is for the payment of a sum of money exceeding fifty rupees, for a period of six months, and,

(b) in any other case for a period of six weeks:

Provided that he shall be released from such detention before the expiration of the said period of six months or six weeks, as the case may be;

(i) on the amount mentioned in the warrant for his detention being paid to the officer in charge of the civil prison, or

(ii) on the decree against him being otherwise fully satisfied, or

(iii) on the request of the person on whose application he has been so detained, or

(iv) on the omission by the person, on whose application he has been so detained, to pay subsistance allowance:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of of the Court.

(2) A judgment debtor released from detention under this section shall not merely by reason of his release be discharged from his debt, but he shall not be liable to be re-arrested under the decree in execution of which he was detained in the civil prison.

59. (1) At any time after a warrant for the arrest of a judgment-debtor has been issued the Court may cancel it on the ground of his serious illness.

Release on ground of illness.

(2) Where a judgment-debtor has been arrested, the Court may release him, if in its opinion he is not in a fit state of health to be detained in the civil prison.

(3) Where a judgment-debtor has been committed to the civil prison, he may be released therefrom

(a) by [1][the Government] on the ground of the existence of any infectious or contagious disease, or

(b) by the committing Court, or any Court to which that Court is subordinate, on the ground of his suffering from any serious illness.

(4) A judgment-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that prescribed by section 58.

[1]See footnote under section 2 (7).

Attachment.

60. (1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and save as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Property liable to attachment and sale in execution of decree.

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;(such as the gold nose ring of a woman during coverture.)

(b) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

([1][(bb) one milch cow and her calf, the latter only so long as it is necessary for milching the cow.])

(c) the (residential house) and houses used for agricultural purposes (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist;

((c. 1) houses of *Kamins* of a village;

(c. 2) *Araziat maqbuza assamian maurusi wa malikan*; but not an *arazi malyari Sagzari* in Srinagar, which is exempted from payment of revenue;

[2][*Explanation.—Araziat maqbuza assamian maurusi wa malikan* include lands held by owners and occupancy tenants whether cultivated directly or through tenants at will.])

[1]Clause (bb) added *vide* Act VI of 1995 published in Government Gazette dated 17th Har 1995.

This shall not apply to attachment already made prior to the date on which this Act came into force

[2]Explanation added *vide* Act [I] of 1993 published in Government Gazette dated 2nd Jeth 1993.

(c. 3) Such portions of the house sought to be attached as may be necessary for the residence of the widow of a judgment-debtor:

Provided, firstly, that accommodation is not available in some other house forming part of the estate of the deceased;

Secondly, that the reservation is to be only for life-time of the widow and during her widowhood and that she would have no right to make any transfer by mortgage sale or otherwise.

(c. 4) A *gharat* or water-mill for grinding corn;

(c. 5) A *kathar* or a *sanduq-i-Shali;*

(d) books of account;

(e) a mere right to sue for damages;

(f) any right of personal service;

(g) stipends and gratuities allowed to pensioners of the Government, and political pensions;

(h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;

(i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of—

(*i*) the whole of the salary, where the salary does not exceed [1][thirty] rupees monthly, or where it is the salary of a village *patwari, kanungo, zaildar* or other village officer;

(*ii*) [1][thirty] rupees monthly, where the salary exceeds [1][thirty] rupees and does not exceed [1][sixty] rupees monthly; and

(*iii*) one moity of the salary in any other case;

[2][Provided that where the whole or any part of the portion of such salary liable to attachment has been under attachment whether continuously or intermittently for a total period of 24 months such portion shall be exempt from attachment until the expiry of a further period of 12 months.]

(j) Omitted.

(k) Omitted.

(l) the wages of labourers and domestic servants whether payable in money or in kind;

(m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(n) a right to future maintenance;

(o) Omitted.

[1]Substituted *vide* Act IV of 1988 published in Government Gazette dated 18th Mar 1988.

[2]Proviso to clause (i) was added *vide* Act VI of 1995 published in Government Gazette dated 17th Mar 1995. This shall not apply to attachment already ordered prior to the date on which this Act comes into force.

(p) where the judgment-debtor is a person liable for the payment of land revenue, any moveable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

([1][(q) one moiety of the *Illuqa* or *Jagir* income of any *Illaqadar* or Jagirdar.])

Explanation.—The particulars mentioned in clauses (g), (h), (i) and (l) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this section shall be deemed—

(a) to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land, or

(b) to affect the provisions of the standing orders for the Kashmir Army or of any similar law for the time being in force.

Partial exemption of agricultural produce.

61. [2][The Government] may, by general or special order published in the Government Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to [2][the Government] to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment-debtor and his family, shall, in the case of all agriculturists, or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

Seizure of property in dwelling-house.

62. (1) No person executing any process under this Code directing or authorising seizure of moveable property shall enter any dwelling-house after sunset and before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty

[1]Clause (q) added *vide* Act IX of 1990 published in Government Gazette dated 2nd Chet 1990.

[2]See footnote under section 2 (7).

to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Property attached in execution of decrees of several Courts.

63. (1) Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realise such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

(2) Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

Private alienation of property after attachment to be void.

64. Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment debtor of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Explanation.—For the purposes of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

Sale.

Purchaser's title.

65. Where immoveable property is sold in execution of a decree and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.

Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff.

66. (1) No suit shall be maintained against any person claiming title under a purchase certified by the Court in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is

liable to satisfy a claim of such third person against the real owner.

Power for Government to make rules as to sales of land in execution of decrees for payment of money.

67. (1) [1][The Government], may, by notification in the Government Gazette, make rules for any local area imposing conditions in respect of the sale of any class of interests in land in execution of decrees for the payment of of money, where such interests are so uncertain or undetermined as, in the opinion of [1][the Government], to make it impossible to fix their value.

(2) When on the date on which this Code comes into operation, any special rules as to sale of land in execution of decrees are in force in any local area, [1][the Government] may, by notification in the Government Gazette, declare such rules to be in force, or may, by a like notification, modify the same.

Every notification issued in the exercise of powers under this sub-section shall set out the rules so continued or modified.

Delegation to Collector of power to execute decrees against immoveable property.

Power to prescribe rules for transferring to Collector execution of certain decrees.

68. [1][The Government] may, declare, by notification in the Government Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of , or interest in, immoveable property, shall be transferred to the Collector. From the day on which this Act comes into force, no decree shall be transferred to the Collector unless and until [1] [the Government] has made a declaration as required by this section.

Provisions of Third Schedule to apply.

69. The provisions set forth in the Third Schedule shall apply to all cases in which the execution of a decree has been transferred under the last preceding section.

Rules of procedure.

70. (1) [1][The Government] may make rules consistent with the aforesaid provisions—

(a) for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for retransmitting the decree from the Collector to the Court;

[1]See footnote under section 2 (7).

(b) conferring upon the Collector or any gazetted subordinate of the Collector all or any of the powers which the Court might exercise in the execution of the decree if the execution thereof had not been transferred to the Collector;

(c) providing for orders made by the Collector or any gazetted subordinate of the Collector, or orders made on appeal with respect to such orders, being subject to appeal to, and revision by, superior revenue-authorities as nearly as may be as the orders made by the Court, or orders made on appeal with respect to such orders, would be subject to appeal to, and revision by, appellate or revisional Courts under this Code or other law for the time being in force if the decree had not been transferred to the Collector.

(2) A power conferred by rules made under sub-section (1) upon the Collector or any gazetted subordinate of the Collector, or upon any appellate or revisional authority, shall not be exerciseable by the Court or by any Court in exercise of any appellate or revisional jurisdiction which it has with respect to decrees or orders of the Court.

Jurisdiction of Civil Courts barred.

71. In executing a decree transferred to the Collector under section 68 the Collector and his subordinates shall be deemed to be acting judicially.

Collector deemed to be acting judicially.

72. (1) Where in any local area in which no declaration under section 68 is in force the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable and that satisfaction of the decree may be made within a reasonable period by a temporary alienation of the land or share, the Court may authorise the Collector to provide for such satisfaction in the manner recommended by him instead of proceeding to a sale of the land or share.

Where Court may authorise Collector to stay public sale of land

(2) In every such case the provisions of sections 69 to 71 and of any rules made in pursuance thereof shall apply so far as they are applicable.

Distribution of assets.

73. (1) Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be

Proceeds of execution sale to be rateably distributed among decree-holders.

rateably distributed among all such persons.

Provided as follows:—

(a) where any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not be entitled to share in any surplus arising from such sale;

(b) where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold:

(c) where any immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal moneys due on subsequent incumbrances (if any); and,

fourthly, rateably among the holders of decrees for the payment of money against the judgement-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

(2) Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

(3) Nothing in this section affects any right of the Government.

Resistance to execution.

Resistance to execution.

74. Where the Court is satisfied that the holder of a decree for the possession of immoveable property or that the purchaser of immoveable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment-debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thrity days and may further direct that the decree-holder or purchaser be put into possession of the property.

PART III.

INCIDENTAL PROCEEDINGS.

Commissions.

Power of Court to issue commission.

75. Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

(a) to examine any person;

(b) to make a local investigation;

(c) to examine or adjust accounts; or

(d) to make a partition.

Commission to another Court

76. (1) A commission for the examination of a person may be issued to any private person or to any Court in the State or to any Court not being High Court, situate in British India or beyond the limits of British India but continued by the authority of His Majesty or of the Governor General of India in Council, or to a Court situate in any part of the British Empire other than British India, or to a Court of any foreign country for the time being in alliance with His Majesty.

(2) Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

Letter of request.

77. In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within the State.

Commissions issued by foreign Court.

78. [1][Subject to such conditions and limitations as may be prescribed] the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by [1][or at the instance of]

(a) Courts situate in or beyond the limits of British India and established or continued by the authority of His Majesty or of the Governor General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country. [2][* * *].

[1]Words in brackets inserted *vide* Act VI of 1995 published in Government Gazette dated 17th Har 1995.

[2]Words "for the time being in alliance with His Majesty" omitted *vide* Act VI of 1995, published in Government Gazette dated 17th Har 1995.

PART IV.

SUITS IN PARTICULAR CASES.

Suits by or against the Government or Public Officers in their official capacity.

Suits by or against Government.

79. (1) Suits by or against the State shall be instituted by or against the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir].

(2) Omitted.

Notice.

80. No suit shall be instituted against the State, or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of four months next after notice in writing has been, in the case of the State, delivered to, or left at the office of, [1][Judicial Minister, His Highness' Government, Jammu and Kashmir], and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

Exemption from arrest and personal appearance.

81. In a suit instituted against a public officer in respect of any act purporting to be done by him in his official capacity—

(a) the defendant shall not be liable to arrest nor his property to attachment otherwise than in execution of a decree, and,

(b) where the Court is satisfied that the defendant cannot absent himself from his duty without detriment to the public service, it shall exempt him from appearing in person

Execution of decree.

82. (1) Where the decree is against the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir] or against a public officer in respect of any such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall

[1]Substituted *vide* Notification 3-L/86 as amended by Council Order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and 10th Phagan 1991 respectively. At first such notices were given to the Chief Minister. Constitutional changes necessitated change in law also and "Secretary Jammu and Kashmir State Council" was substituted for "Chief Minister" *vide* Notification No. 2, dated 17th October 1922 published in Government Gazette dated 7th Katik 1979. Later on Minister-in-Waiting was authorised to dispose of such notices, *vide* Notification No. 6-L/84 published in Government Gazette dated 17th Jeth 1984. This Notification was however repealed by Notification No. 3-L/86 which is the law at present as amended by Council Order 46 of 1935.

report the case for the orders of [1][the Government].

(2) Execution shall not be issued on any such decree unless it remains unsatisfied for the period of three months computed from the date of such report.

Suits by Aliens and by or against Foreign and Native Rulers.

When aliens may sue.

83. No alien enemy of His Majesty the King Emperor and no subject of an enemy country shall sue in any of the State Courts, except with the permission of His Highness.

Explanation.—Every person residing in a country the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a licence in that behalf under the hand of one of His Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of this section be deemed to be an alien enemy.

84. The British Government and its subjects and a Foreign State in alliance with His Majesty the King Emperor and its subjects shall be entitled to sue in a State Court.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

85. (1) Persons specially appointed by order of the Government at the request of any Soverign Prince or Ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, or the State or at the request of any person competent, in the opinion of the Government, to act on behalf of such Prince or Chief, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

(2) An appointment under this section may be made for the purpose of a specified suit or of several specified suits, or for the purpose of all such suits as it may from time to time be necessary to prosecute or defend on behalf of the Prince or Chief.

(3) A person appointed under this section may authorise or appoint persons to make appearances and applications and do acts in any such suit or suits as if he were himself a party thereto.

[1]See footnote under section 2 (7).

86. (1) Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of His Highness, certified by the signature of [1][Judicial Minister, His Highness, Government Jammu and Kashmir], but not without such consent, be sued in any competent Court.

Suits against Princes, Chiefs, ambassadors and envoys.

(2) Such consent may be given with respect to a specified suit or to several specified suits, or with respect to all suits of any specified class or classes, and may specify, in the case of any suit or class of suits, the Court in which the Prince, Chief, ambassador or envoy may be sued; but it shall not be given unless it appears to he Government that the Prince, Chief, ambassador or envoy—

(a) has instituted a suit in the Court against the person desiring to sue him, or

(b) by himself or another trades within the local limits of the jurisdiction of the Court, or

(c) is in possession of immoveable property situate within those limits and is to be sued with reference to such property or for money charged thereon.

(3) No such Prince, Chief, ambassador or envoy shall be arrested under this Code, and, except with the consent of His Highness certified as aforesaid, no decree shall be executed against the property of any such Prince, Chief, ambassador or envoy.

(4) Omitted.

(5) A person may, as a tenant of immoveable property, sue, without such consent as is mentioned in this section, a Prince, Chief, ambassador or envoy from whom he holds or claims to hold the property.

87. A Soverign Prince or Ruling Chief, may sue, and shall be sued, in the name of his State:

Style of Princes and Chief as parties to suits.

Provided that in giving the consent referred to in the foregoing section His Highness may direct that any such Prince or Chief shall be sued in the name of an agent or in any other name.

Interpleader

88. Where two or more persons claim adversely to one another the same debt, sum of money or other property, moveable or immoveable, from another person, who claims no inter-

Where interpleader suit may be instituted.

*Substituted *vide* Notification 3-L/86 amended by council order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and Government Gazette dated 10th Phagan 1991 respectively.

est therein other than for charges or costs and who is ready to pay or deliver it to the righful claimant, such other person may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to the person to whom the payment or delivery shall be made and of obtaining indemnity for himself:

Provided that where any suit is pending in which the rights of all parties can properly be decided, no such suit of interpleader shall be instituted.

PART V.

SPECIAL PROCEEDINGS.

Arbitration.

89. (1) Save in so far as is otherwise provided by any other law for the time being in force, all references to arbitration whether by an order in a suit or otherwise, and all proceedings thereunder, shall be governed by the provisions contained in the second Schedule.

Arbitration.

(2) The provisions of the Second Schedule shall not affect any arbitration pending at the commencement of this Code, but shall apply to any arbitration after that date under any agreement or reference made before the commencement of this Code.

Special Case.

90. Where any persons agree in writing to state a case for the opinion of the Court, then the Court shall try and determine the same in the manner prescribed.

Power to state case for opinion of Court.

Suits relating to Public Matters.

91. (1) In the case of a public nuisance the State Advocate or the Governor, or two or more persons having obtained the consent in writing of the Governor, may institue a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

Public nuisance.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

92. (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the State Advocate or Governor, or two or more persons having an interest in the trust and having obtained the consent in writing of the Governor may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by [1][the Government] within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree—

Public charities.

(a) removing any trustee;

(b) appointing a new trustee;

(c) vesting any property in a trustee;

(d) directing accounts and inquiries;

(e) declaring what proportion of the trust-property or of the interest therein shall be allocated to any particular object of the trust;

(f) authorising the whole or any part of the trust-property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require.

(3) Save as provided by the Religious Endowments Act, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

93. Omitted.

PART VI.

SUPPLEMENTAL PROCEEDINGS.

94. In order to prevent the ends of justice from being defeated the Court may, if it is so prescribed,—

Supplemental proceedings.

(a) issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance, and if he fails to comply with any order for security commit him to the civil prison;

(b) direct the defendant to furnish security to produce any property belonging to him and to place the same at the

[1]See footnote under section 2 (7).

disposal of the Court or order the attachment of any property;

(c) grant a temporary injunction and in case of disobedience commit the person guilty thereof to the civil prison and order that his property be attached and sold;

(d) appoint a receiver of any property and enforce the performance of his duties by attaching and selling his property;

(e) make such other interlocutory orders as may appear to the Court to be just and convenient.

Compesation for obtaining arrest, attachment or injuction on insufficient grounds.

95. (1) Where, in any suit in which an arrest or attachment has been effected or a temporary injunction granted under the last preceding section,—

(a) it appears to the Court that such arrest, attachment or injunction was applied for on insufficient grounds, or

(b) the suit of the plaintiff fails and it appears to the Court that there was no reasonable or probable ground for instituting the same,

the defendant may apply to the Court, and the Court may, upon such application, award against the plaintiff by its order such amount, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him:

Provided that a Court shall not award, under this section, an amount exceeding the limits of its pecuniary jurisdiction.

(2) An order determining any such application shall bar any suit for compensation in respect of such arrest, attachment or injunction.

PART VII.

APPEALS.

Appeals from Original Decrees.

Appeal from original decree.

96. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed *ex parte*.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

97. Where any party aggrieved by a preliminary decree passed after the commencement of this Code does not appeal from such decree, he shall be precluded from disputing its correctness in any appeal which may be preferred from the final decree.

Appeal from final decree where no appeal from preliminary decree.

98. Omitted.

99. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court.

No decree to be reversed or modified for error or irregularity not effecting merits or jurisdiction.

Appeals from Appellate Decrees.

100. (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to a High Court, on any of the following grounds, namely:—

Second appeal.

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Code or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon the merits;

[1][(d) Where the decision of the first Court in a suit in which the value of the subject-matter exceeds Rs. 100 has been varied or reversed by the lower appellate Court, on the ground that the decision is against the weight of the evidence in the case.]

(2) An appeal may lie under this section from an appellate decree passed *ex par'e*

101. No second appeal shall lie except on the grounds mentioned in section 100.

Second appeal on no other grounds.

102. No second appeal shall lie in any suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

No second appeal in certain suits.

[1]Clause (*d*) substituted *vide* Act VI of 1995 published in the Government Gazette dated 17th Mar 1995.

103. In any second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue of fact necessary for the disposal of the appeal but not determined by the lower appellate Court.

Power of High Court to determine issues of fact.

Appeals from Orders.

104. (1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force from no other order:—

Orders from which appeal lies.

(a) an order superseding an arbitration where the award has not been completed within the period allowed by the Court;

(b) an order on an award stated in the form of a special case;

(c) an order modifying or correcting an award;

(d) an order filing or refusing to file an agreement to refer to arbitration;

(e) an order staying or refusing to stay a suit where there is an agreement to refer to arbitration;

(f) an order filing or refusing to file an award in an arbitration without the intervention of the Court;

[1][(ff) an order under section 35-A.]

(g) an order under section 95;

(h) an order under any of the provisions of this Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree;

(i) any order made under rules from which an appeal is expressly allowed by rules.

[1][Provided that no appeal shall lie against any order specified in clause (ff) save on the ground that no order or an order for payment of a less amount, ought to have been made.]

(2) No appeal shall lie from any order passed in appeal under this section.

105. (1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

Other orders.

[1]Clause (*ff*) and proviso to clause (*i*) inserted *vide* Act IV of 1988 published in Government Gazette dated 18th Mar 1988.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand made after the commencement of this Code from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness.

106. Where an appeal from any order is allowed it shall lie to the Court to which an appeal would lie from the decree in the suit in which such order was made, or where such order is made by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

What Courts to hear appeals.

General provisions relating to Appeals.

107. (1) Subject to such conditions and limitations as may be prescribed, an Appellate Court shall have power—

Powers of Appellate Court.

(a) to determine a case finally;

(b) to remand a case;

(c) to frame issues and refer them for trial;

(d) to take additional evidence or to require such evidence to be taken.

(2) Subject as aforesaid, the Appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.

108. The provisions of this Part relating to appeals from original decrees shall, so far as may, apply to appeals—

Procedure in appeals from appellate decrees and orders.

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a different procedure is not provided.

[1]**109.** Repealed.

[1]**110.** Repealed.

[1]**111.** Repealed.

112. Nothing contained in this Code shall be deemed—

Savings.

to bar the full and unqualified exercise of His Highness' pleasure in receiving or rejecting appeals to His Highness or otherwise howsoever.

[1]Section 109, 110 and 111 repealed *vide* Notification No. 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

PART VIII.

REFERENCE, REVIEW AND REVISION.

Reference to High Court.

113. Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

Review.

114. Subject as aforesaid, any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit.

Revision.

115. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, or

[1][(d) to have caused failure of justice]

the High Court may make such order in the case as it thinks fit.

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[2]PART IX.

SPECIAL PROVISION RELATING TO THE HIGH COURT.

Part to apply only to High Court

116. This part applies only to the High Court.

[1]Substituted for the words "to have failed to do substantial justice or to have caused failure of justice" *vide* Notification No. 1, dated 30th Baisakh, 1978 published in the Government Gazette dated 17th Jeth 1978.

[2]Part IX inserted *vide* Notification 3-L/1985 published in Government Gazette dated 8th Bhadon 1985.

117. Save as provided in this Part or in Part X or in rules, the provisions of this Code shall apply to the High Court.

Application of Code to High Court.

118. Where the High Court considers it necessary that a decree passed in the exercise of its original civil jurisdiction should be executed before the amount of the costs incurred in the suit can be ascertained by taxation the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs; and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

Execution of decree before ascertainment of costs.

119. Nothing in this Code shall be deemed to authorise any person on behalf of another to address the Court in the exercise of its original civil jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of its powers authorised him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys.

Unauthorised persons not to address Court.

120. The following provisions shall not apply to the High Court in the exercise of its original civil jurisdiction, namely, sections 16, 17 and 20.

Provisions not applicable to High Court in original civil jurisdiction.

PART X.

RULES.

121. The rules in the First Schedule shall have effect as if enacted in the body of this Code until annulled or altered in accordance with the provisions of this Part.

Effect of rules in First Schedule.

[1][**122.** The High Court may, from time to time after previous publication, make rules regulating its own procedure and the procedure of the Civil Courts subject to its superintendence and may by such rules annul, alter, or add to all or any of the rules in the First Schedule].

Power of High Court to make rules.

123. Omitted.

124. Omitted.

125. Omitted.

[1]Section 122 substituted *vide* Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

[1][**126.** Rules made under the foregoing provision shall be subject to the previous approval of His Highness.

Rules subject to sanction.

127. Rules so made and approved shall be published in the Jammu and Kashmir Government Gazette, and shall from the date of publication or from such other date as may be specified have the same force and effect, as if they had been contained in the First Schedule.

Publication of rules.

128. (1) Such rules shall be not inconsistent with the provisions in the body of this Code, but, subject thereto, may provide for any matters relating to the procedure of Civil Courts.

Matters for which rules may provide.

(2) In particular, and without prejudice to the generality of the powers conferred by sub-section (1), such rules may provide for all or any of the following matters, namely:—

(a) the service of summonses, notices and other processes by post or in any other manner either generally or in any specified areas, and the proof of such service;

(b) the maintenance and custody, while under attachment, of live-stock and other moveable property, the fees payable for such maintenance and custody, the sale of such live-stock and property, and the proceeds of such sale;

(c) procedure in suits by way of counterclaim, and the valuation of such suits for the purposes of jurisdiction;

(d) procedure in garnishee and charging orders either in addition to, or in substitution for, the attachment and sale of debts;

(e) procedure where the defendant claims to be entitled to contribution or indemnity over against any person whether a party to the suit or not;

(f) Omitted.

(g) Omitted

(h) Consolidation of suits, appeals and other proceedings;

(i) delegation to the Registrar, Deputy Registrar or other official of the Court of any judicial, quasi-judicial and non-judicial duties; and

(j) all forms, registers, books, entries and accounts which may be necessary or desirable for the transaction of the business of Civil Courts.

129. Notwithstanding anything in this Code, the High Court may make such rules not inconsistent with the [2]order of His Highness No. 1, dated 26th March 1928, to regulate its own

Power of High Court to make rules as to its original civil jurisdiction.

[1]Sections 126, 127, 128, 129, and 131 inserted *vide* notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

[2]This order is repealed and replaced by Part IV of Act XIV of 1996.

procedure in the exercise of its original civil jurisdiction as it shall think fit, and nothing herein contained shall effect the validity of any such rules in force at the commencement of this Code.

130. Omitted.

131. Rules made in accordance with section 129 shall be published in the Jammu and Kashmir Government Gazette and shall from the date of publication or from such other date as may be specified have the force of law.]

Publication of rules.

PART X

MISCELLANEOUS.

132. (1) Women who, according to the customs and manners of the country, ought not to be compelled to appear in public shall be exempt from personal appearance in Court.

Exemption of certain women from personal appearance.

(2) Nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process in any case in which the arrest of women is not prohibited by this Code.

133. (1) His Highness may, by notification in the State Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of His Highness, entitles him to the privilege of exemption.

Exemption of other persons.

(2) The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by His Highness and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

(3) Where any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

134. The provisions of sections 55, 57 and 59 shall apply, so far as may be, to all persons arrested under this Code.

Arrest other than in execution of decree.

135. (1) No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Exemption from arrest under civil process.

(2) Where any matter is pending before a tribunal having jurisdiction therein, or believeing in good faith that it has

such jurisdiction, the parties thereto their pleaders, *mukhtars*, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process other than process issued by such tribunal for contempt of Court while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

(3) Nothing in sub-section (2) shall enable a judgment-debtor to claim exemption from arrest under an order for immediate execution or where such judgment-debtor attends to show cause why he should not be committed to prison in execution of a decree.

Exemption of members of Legislative Assembly from arrest and detention under civil process.

[1][**135-A.** (1) No person shall be liable to arrest or detention in prison under civil process:—

(a) if he is a member of the Jammu and Kashmir [2]Assembly, during the continuance of any meeting of such [2]Assembly;

(b) if he is a member of any Committee of the [2]Assembly, during the continuance of any meeting of such Committee; and

during the 14 days before and after such meeting.

(2) A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provision of sub-section (1).]

Procedure where person to be arrested or property to be attached is outside district.

136. (1) Where an application is made that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or such property is situate outside the local limits of the jurisdiction of the Court to which the application is made, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

(2) The District Court, shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own

[1]Section 135-A added *vide* Act VIII of 1991 published in Government Gazette dated 15th Bhadon 1991.

[2]Praja Sabha.

officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment.

(3) The Court making an arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he shows cause to the satisfaction of the former Court why he should not be sent to the latter Court, or unless he furnishes sufficient security for his appearance before the latter Court or for satisfying any decree that may be passed against him by that Court, in either of which cases the Court making the arrest shall release him.

(4) Omitted.

Language of subordinate Courts.

137. (1) The language which, on the commencement of this Code, is the language of any Court subordinate to the High Court shall continue to be the language of such subordinate Court until [1][the Government] otherwise direct.

(2) [1][The Government] may delcare what shall be the language of any such Court and in what character applications to and proceedings in such Courts shall be written.

(3) Where this Code requires or allowes anything other than the recording of evidence to be done in writing in any such Court, such writing may be in English; but if any party or his pleader is unacquainted with English a translation into the language of the Court shall, at his request, be supplied to him; and the Court shall make such order as it thinks fit in respect of the payment of the costs of such translation.

Power of High Court to require evidence to be recorded in English

138. (1) The High Court may, by notification in the Government Gazette, direct with respect to any Judge specified in the notification, or falling under a description set forth therein, that evidence in cases in which an appeal is allowed shall be taken down by him in the English language and in manner prescribed.

(2) Where a Judge is prevented by any sufficient reason from complying with a direction under sub-section (1), he shall record the reason and cause the evidence to be taken down in writing from his dictation in open Court.

Oath or affidavit by whom to be administered.

139. In the case of any affidavit under this Code—

(a) any Court or Magistrate, or

(b) any officer or other person whom the High Court may appoint in this behalf, or

[1]See footnote under section 2 (7).

(c) any officer appointed by any other Court which [1][the Government] has generally or specially empowered in this behalf,

may administer the oath to the deponent.

140. Omitted.

Miscellaneuos proceedings.

141. The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction.

Orders and notices to be in writing.

142. All orders and notices served on or given to any person under the provisions of this Code shall be in writing.

Postage.

143. Postage, where chargeable on a notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed before the communication is made:

Provided that [1][the Government] may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

Application for restitution.

144. (1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the appplication of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Enforcement of liability of surety.

145. Where any person has become liable as surety—

(a) for the performance of any decree or any part thereof, or

(b) for the restitution of any property taken in execution of a decree, or

(c) for the payment of any money, or for the fulfilment of any condition imposed on any person, under an order of the Court in any suit or in any proceeding consequent thereon,

[1]See footnote under section 2 (7).

the decree or order may be executed against him, to the extent to which he has rendered himself personally liable, in the manner herein provided for the execution of decrees, and such person shall, for the pruposes of appeal, be deemed a party within the meaning of section 47:

Provided that such notice as the Court in each case thinks sufficient has been given to the surety.

Proceedings by or against representatives.

146. Save as otherwise provided by this Code or by any law for the time being in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

Consent or agreement by persons under disability.

147. In all suits to which any person under disability is a party, any consent or agreement, as to any proceeding shall, if given or made with the express leave of the Court by the next friend or guardian for the suit, have the same force and effect as if such person, were under no disability and had given such consent or made such agreement.

Enlargement of time.

148. Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the Court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.

Power to make up deficiency of court-fees.

149. Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance.

Transfer of business

150. Save as otherwise provided, where the business of any Court is transferred to any other Court, the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under this Code upon the Court from which the business was so transferred.

Saving of inherent powers of Court.

151. Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

Amendment of judgments, decrees or orders.

152. Clerical or arithmetical mistakes in judgments, decrees, or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

General power to amend.

153. The Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.

Saving of present right of appeal.

154. Nothing in this Code shall affect any present right of appeal which shall have accrued to any party at its commencement.

155 and **156.** Omitted.

Continuance of orders under certain enactments.

157. Notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed, forms framed, appointments made and powers conferred under any enactment relating to matters dealt with in this Code shall, so far as they are consistent with this Code, have the same force and effect as if they had been respectively published, made, appointed, filed, prescribed, framed and conferred under this Code and by the authority empowered thereby in such behalf.

Reference to certain enactmant relating to matters dealt with in this code.

158. In every enactment or notification passed or issued before the commencement of this Code in which reference is made to or to any chapter such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding Part, Order, section or rule.

THE FIRST SCHEDULE.

RULE.

ORDER I.

Parties to Suits.

1. Who may be joined as plaintiffs.

2. Power of Court to order separate trials.

3. Who may be joined as defendants.

4. Court may give judgment for or against one or more of joint parties.

5. Defendant need not be interested in all the relief claimed.

6. Joinder of parties liable on same contract.

7. When plaintiff in doubt from whom redress is to be sought.

8. One person may sue or defend on behalf of all in same interest.

9. Misjoinder and nonjoinder.

10. Suit in name of wrong plaintiff.

    Court may strike out or add parties.

    Where defendant added, plaint to be amended.

11. Conduct of suit.

12. Appearance of one of several plaintiffs or defendants for others.

13. Objections as to nonjoinder or misjoinder.

RULE.

ORDER II.

Frame of Suit.

1. Frame of suit.

2. Suit to include the whole claim.

    Relinquishment of part of claim.

    Omission to sue for one of several reliefs.

3. Joinder of causes of action.

4. Only certain claims to be joined for recovery of immovable property.

5. Claims by or against executor, administrator or heir.

6. Power of Court to order separate trials.

7. Objections as to misjoinder.

ORDER III.

Recognized Agents and Pleaders.

1. Appearances, etc., may be in person, by recognized agent or by pleader.

2. Recognized agents.

3. Service of process on recognized agent.

4. Appointment of pleader.

5. Service of process on pleader.

6. Agent to accept service.

    Appointment to be in writing and to be filed in Court.

RULE.

ORDER IV.

Institution of Suits.

1. Suit to be commenced by plaint.

2. Register of suits.

ORDER V.

Issue and Service of Summons.

Issue of Summons.

1. Summons.

2. Copy or statement annexed to summons.

3. Court may order defendant or plaintiff to appear in person.

4. No party to be ordered to appear in person unless resident within certain limits.

5. Summons to be either to settle issues or for final disposal.

6. Fixing day for appearance of defendant.

7. Summons to order defendant to produce documents relied on by him.

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.

Service of Summons.

9. Delivery or transmission of summons for service.

10. Mode of service.

11. Service on several defendants.

12. Service to be on defendant in

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person when practicable, or on his agent.

13. Service on agent by whom defendant carries on business.

14. Service on agent in charge in suits for immovable property.

15. Where service may be on male member of defendant's family.

16. Person served to sign acknowledgment.

17. Procedure when defendant refuses to accept service, or cannot be found.

18. Endorsement of time and manner of service.

19. Examination of serving officer.

20. Substituted service.

Effect of substituted service.

Where service substituted, time for appearance to be fixed.

21. Service of summons where defendant resides within jurisdiction of another Court.

22. Omitted.

23. Duty of Court to which summons is sent.

24. Service on defendant in prison.

25. Service where defendant resides out of the State and has no agent.

26. Omitted.

27. Service on civil public officer or on servant of railway company or local authority.

28. Service on soldiers.

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29. Duty of person to whom summons is delivered or sent for service.

30. Substitution of letter for summons.

ORDER VI.

Pleading generally.

1. Pleading.

2. Pleading to state material facts and not evidence.

3. Form of pleading.

4. Particulars to be given where necessary.

5. Further and better statement, or particulars.

6. Condition precedent.

7. Departure.

8. Denial of contract.

9. Effect of document to be stated.

10. Malice, knowledge, etc.

11. Notice.

12. Implied contract, or relation.

13. Presumptious of law.

14. Pleading to be signed.

15. Verification of pleadings.

16. Striking out pleadings.

17. Amendment of pleadings.

18. Failure to amend after order.

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ORDER VII.

Plaint.

1. Particulars to be contained in plaint.

2. In money suits.

3. Where the subject-matter of the suit is immoveable property.

4. When plaintiff sues as representative.

5. Defendant's interest and liability to be shown.

6. Grounds of exemption from limitation law.

7. Relief to be specifically stated.

8. Relief founded on separate grounds.

9. Procedure on admitting plaint.

Concise statements.

10. Return of plaint.

Procedure on returning plaint.

11. Rejection of plaint.

12. Procedure on rejecting plaint.

13. Where rejection of plaint does not preclude presentation of fresh plaint.

Documents relied on in plaint.

14. Production of document on which plaintiff sues.

List of other documents.

15. Statement in case of documents not in his possession or power.

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16. Suits on lost negotiable instruments.

17. Production of shop-book.

Original entry to be marked and returned.

18. Inadmissibility of document not produced when plaint filed.

ORDER VIII.

Written Statement and Set-off.

1. Written statement.

2. New facts must be specially pleaded.

3. Denial to be specific.

4. Evasive denial.

5. Specific denial.

6. Particulars of set-off to be given in written statement.

Effect of set-off.

7. Defence or set-off founded on separate grounds.

8. New ground of defence.

9. Subsequent pleadings.

10. Procedure when party fails to present written statement called for by Court.

ORDER IX.

Appearance of Parties and Consequence of Non-appearance.

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1. Parties to appear on day fixed in summons for defendant to appear and answer.

2. Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

3. Where neither party appears, suit to be dismissed.

4. Plaintiff may bring fresh suit or Court may restore suit to file.

5. Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

6. Procedure when only plaintiff appears.

When summons duly served.

When summons not duly served.

When summons served, but not in due time.

7. Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

8. Procedure where defendant only appears.

9. Decree against plaintiff by default bars fresh suit.

10. Procedure in case of non-attendance of one or more of several plaintiffs.

11. Procedure in case of non-attendance of one or more of several defendants.

12. Consequence of non-attendance, without sufficient cause shown, of party ordered to appear in person.

RULE.

Setting aside Decrees ex parte.

13. Setting aside decree *ex parte* against defendant.

14. No decree to be set aside without notice to opposite party.

ORDER X.

Examination of Parties by the Court.

1. Ascertainment whether allegations in pleadings are admitted or denied.

2. Oral examination of party, or companion of party.

3. Substance of examination to be written.

4. Consequence of refusal or inability of pleader to answer.

ORDER XI.

Discovery and Inspection.

1. Discovery by interrogatories.

2. Particular interrogatories to be submitted.

3. Costs of interrogatories.

4. Form of interrogatories.

5. Corporations.

6. Objections to interrogatories by answer.

7. Setting aside and striking out interrogatories.

8. Affidavit in answer, filing.

9. Form of affidavit in answer.

10. No exception to be taken.

RULE.

11. Order to answer or answer further.

12. Application for discovery of documents.

13. Affidavit of documents.

14. Production of documents.

15. Inspection of documents referred to in pleading or affidavits.

16. Notice to produce.

17. Time for inspection when notice given.

18. Order for inspection.

19. Verified copies.

20. Premature discovery.

21. Non-compliance with order for discovery.

22. Using answers to interrogatories at trial.

23. Order to apply to minors.

ORDER XII.

Admissions.

1. Notice of admission of case.

2. Notice to admit documents.

3. Form of notice.

4. Notice to admit facts.

5. Form of admissions.

6. Judgment on admissions.

7. Affidavit of signature.

8. Notice to produce documents.

9. Costs.

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ORDER XIII.

Production, Impounding and Return of Documents.

1. Documentary evidence to be produced at first hearing.
2. Effect of non-production of documents.
3. Rejection of irrelevant or inadmissible documents.
4. Endorsements on documents admitted in evidence.
5. Endorsements on copies of admitted entries in books, accounts, and records.
6. Endorsements on documents rejected as inadmissible in evidence.
7. Recording of admitted and return of rejected documents.
8. Court may order any document to be impounded.
9. Return of admitted documents.
10. Court may send for papers from its own records or from other Courts.
11. Provisions as to documents applied to material objects.

ORDER XIV.

Settlement of Issues and Determination of Suit on Issues of Law or on Issues agreed upon.

Framing of issues.
2. Issues of law and of fact.
3. Materials from which issues may be framed.

RULE.

4. Court may examine witnesses or documents before framing issues.
5. Power to amend, and strike out, issues.
6. Questions of fact or law may by agreement be stated in form of issues.
7. Court, if satisfied that agreement was executed in good faith may pronounce judgment.

ORDER XV.

Disposal of the Suit at the first hearing.

1. Parties not at issue.
2. One of several defendants not at issue.
3. Parties at issue.
4. Failure to produce evidence.

ORDER XVI.

Summoning and Attendance of Witnesses

1. Summons to attend to give evidence or produce documents.
2. Expenses of witness to be paid into Court on applying for summons.

Experts.

Scale of expenses.
3. Tender of expenses to witness.
4. Procedure where insufficient sum paid in.

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Expenses of witnesses detained more than one day.

5. Time, place and purpose of attendence to be specified in summons.

6. Summons to produce document.

7. Power to require persons present in Court to give evidence or produce document.

8. Summons how served.

9. Time for serving summons.

10. Procedure where witness fails to comply with summons.

11. If witness appears, attachment may be withdrawn.

12. Procedure if witness fails to appear.

13. Mode of attachment.

14. Court may of its of own accord summon as witnesses strangers to suit.

15. Duty of persons summoned to give evidence or produce document.

16. When they may depart.

17. Application of rules 10 to 13.

18. Procedure where witness apprehended cannot give evidence or produce document.

19. No witness to be ordered to attend in person unless resident within certain limits.

20. Consequence of refusal of party to give evidence when called on by Court.

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21. Rules as to witness to apply to parties summoned.

ORDER XVII.

Adjournments.

1. Court may grant time and adjourn hearing.

Costs of adjournment.

2. Procedure if parties fail to appear on day fixed.

3. Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII.

Hearing of the Suit and Examination of Witnesses.

1. Right to begin.

2. Statement and production of evidence.

3. Evidence where several issues.

4. Witnesses to be examined in open Court.

5. How evidence shall be taken in appealable cases.

6. When deposition to be interpreted.

7. Evidence under section 138.

8. Memorandum when evidence not taken down by Judge.

9. When evidence may be taken in English.

10. Any particular question and answer may be taken down.

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11. Questions objected to and allowed by Court.

12. Remarks on demeanour of witnesses.

13. Memorandum of evidence in unappealable cases.

14. Judge unable to make such memorandum to record reasons of his inability.

15. Power to deal with evidence taken before another Judge.

16. Power to examine witness immediately.

17. Court may recall and examine witness.

18. Power of Court to inspect.

ORDER XIX.

Affidavits.

1. Power to order any point to be proved by affidavit.

2. Power te order attendance of deponent for cross-examination.

3. Matters to which affidavits shall be confined.

ORDER XX.

Judgment and Decree.

1. Judgment when pronounced.

2. Power to pronounce judgment written by Judges' predecessor.

3. Judgment to be signed.

4. Judgments of Small Cause Courts.

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Judgments of other Courts.

5. Court to state its decision on each issue.

6. Contents of decree.

7. Date of decree.

8. Procedure where Judge has vacated office before signing decree.

9. Decree for recovery of immoveable property.

10. Decree for delivery of moveable property.

11. Decree may direct payment by instalments.

Order, after decree, for payment by instalments.

12. Decree for possession and mesne profits.

13. Decree in administration suit.

14. Decree in right of prior purchase suit.

15. Decree in suit for dissolution of partnership.

16. Decree in suit for account between principal and agent.

17. Special directions as to accounts.

18. Decree in suits for partition of property or separate possession of share therein.

19. Decree when set-off is allowed.

Appeal from decree relating to set-off.

20. Certified copies of judgment and decree to be furnished.

RULE.

ORDER XXI.

Execution of Decrees and Orders.

Payment under Decree.

1. Modes of paying money under decree.

2. Payment out of Court to decree-holder.

Court executing Decrees.

3. Lands situate in more than one jurisdiction.

4. Omitted.

5. Mode of transfer.

6. Procedure where Court desires that its own decree shall be executed by another Court.

7. Court receiving copies of decree, etc., to file same without proof.

8. Execution of decree or order by Court to which it is sent.

9. Omitted.

Applicatian for execution.

10. Application for execution.

11. Oral application.

Written application.

12. Application for attachment of moveable property not in judgment-debtor's possession.

13. Application for attachment of immoveable property to contain certain particulars.

14. Power to require certified extract from Collector's register in certain cases.

RULE.

15. Application for execution by joint decree-holder.

16. Application for execution by transferee of decree.

17. Procedure on receiving application for execution of decree.

18. Execution in case of cross-decrees.

19. Execution in case of cross-claims under same decree.

20. Cross-decree and cross-claims in mortgage-suits.

21. Simultaneous execution.

22. Notice to show cause against execution in cartain cases.

23. Procedure after issue of notice.

Process for execution.

24. Process for execution.

25. Endorsement on process.

Stay of execution.

26. When Court may stay execution.

Power to require security from, or impose conditions upon, judgment-debtor.

27. Liability of judgment-debtor discharged.

28. Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

29. Stay of execution pending suit between decree-holder and judgment-debtor.

RULE.

Mode of execution.

30. Decree for payment of money.

31. Decree for specific moveable property.

32. Decree for specific performance for restitution of conjugal rights or for an injunction.

33. Discretion of Courts in executing decrees for restitution of conjugal rights.

34. Decree for execution of document, or endorsement of negotiable instrument.

35. Decree for immoveable property.

36. Decree for delivery of immoveable property when in occupancy of tenant.

Arrest and detention in the civil prison.

37. Discretionary power to permit judgement-debtor to show cause against detention in prison.

38. Warrant for arrest to direct judgement-debtor to be brought up.

39. Subsistence-allowance.

40. Proceedings on appearance of judgement-debtor in obedience to notice or after arrest.

Attachment of property.

41. Examination of judgement-debtor as to his property.

42. Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

43. Attachment of moveable property, other than agricultural produce, in possession of judgement-debtor.

RULE.

44. Attachment of agricultural produce.

45. Provisions as to agricultural produce under attachment.

46. Attachment of debt, share and other property not in possession of judgement-debtor.

47. Attachment of share in moveables.

48. Attachment of salary or allowances of public officer or servant of railway company.

49. Attachment of partnership property.

50. Execution of decree against firm.

51. Attachment of negotiable instruments.

52. Attachment of property in custody of Court or public officer.

53. Attachment of decrees.

54. Attachment of immoveable property.

55. Removal of attachment after satisfaction of decree.

56. Order for payment of coin or currency notes to party entitled under decree.

57. Determination of attachment.

Investigation of claims and objections.

58. Investigation of claims to, and objections to attachment of, attached property.

Postponement of sale.

RULE.

59. Evidence to be adduced by claimant.

60. Release of property from attachment.

61. Disallowance of claim to property attached.

62. Continuance of attachment subject to claim of incumbrance.

63. Saving of suits to establish right to attached property.

Sale generally.

64. Power to order property attached to be sold and proceeds to be paid to person entitled.

65. Sale by whom conducted and how made.

66. Proclamation of sales by public auction.

67. Mode of making proclamation.

68 Time of sale

69. Adjournment or stoppage of sale.

70. Saving of certain sales.

71. Defaulting purchaser answerable for loss on re-sale.

72. Decree-holder not to bid for or buy property without permission.

Where decree-holder purchases, amount of decree may be taken as payment.

73. Restriction on bidding or purchase by officers.

RULE.

Sale of moveable property.

74. Sale of agricultural produce.

75. Special povisions relating to growing crops.

76. Negotiable instrument and shares in corporation.

77. Sale by public auction.

78. Irregularity not to vitiate sale but any person injured may use.

79. Delivery of moveable property, debts and shares.

80. Transfer of negotiable instruments and shares.

81. Vesting order in case of other property.

Sale of immoveable property.

82. What Courts may order sales.

83. Postponement of sale to enable judgement-debtor to raise amount of decree.

84. Deposit by purchaser and re-sale on default.

85. Time for payment in full of purchase-money.

86. Procedure in default of payment.

87. Notification on re-sale.

88. Bid of co-sharer to have preference.

89. Application to set aside sale on deposit.

90. Application to set aside sale on ground of irregularity or fraud.

RULE.

91. Application by purchaser to set aside sale on ground of judgement-debtor having no saleable interest.

92. Sale when to become absolute or be set aside.

93. Return of purchase-money in certain cases.

94. Certificate to purchaser.

95. Delivery of property in occupancy of judgement-debtor.

96. Delivery of property in occupancy of tenant.

Resistance to delivery of possession to decree-holder or purchaser.

97. Resistance or obstruction to possession of immoveable property.

98. Resistance or obstruction by judgment-debtor.

99. Resistance or obstruction by *bona fide* claimant.

100. Dispossession by decree-holder or purchaser.

101. *Bona fide* claimant to be restored to possession.

102. Rules not applicable to transferee *lite pendente*.

103. Orders conclusive subject to regular suit.

ORDER XXI A.

Insolvent Judgment-debtors.

1. Power to apply for declaration of insolvency.

2. Contents of application.

RULE.

3. Subscription and verification of application.

4. Service of copy of application and notice.

5. Power to serve other creditors.

6. Powers of Court as to judgment-debtor under arrest.

7. Procedure at hearing.

8. Declaration of insolvency and appointment of Receiver.

9. Creditors to prove their debts and schedule to be framed.

10. Application by unscheduled creditors.

11. Effect of order appointing Receiver.

12. Receiver to give security and to collect assets.

Discharge of the insolvent.

13. Duty of Receiver.

14. Effect of discharge.

15. Declaration that insolvent is discharged from such liability.

16. Procedure in case of dishonest applicant.

17. Investment of other courts with powers of District Courts.

ORDER XXII.

Death, Marriage and Insolvency of Parties.

1. No abatement by party's death, if right to sue survives.

2. Procedure where one of several plaintiffs or defendants dies and right to sue survives.

RULE.

3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant.

5. Determination of question as to legal repsesentative.

6. No abatement by reason of death after hearing.

7. Suit not abated by marriage of female party.

8. When plaintiff's insolvency bars suit.

Procedure where assignee fails to continue suit or give security.

9. Effect of abatment or dismissal.

10. Procedure in case of assignment before final order in suit.

11. Application of Order to appeals.

12. Application of Order to proceedings.

ORDER XXIII.

Withdrawal and Adjustment of Suits.

1. Withdrawl of suit or abandonment of part of claim.

2. Limitation law not affected by first suit.

3. Compromise of suit.

4. Proceedings in execution of decrees not affected.

RULE.

ORDER XXIV.

Payment into Courts.

1. Deposit by defendant of amount in satisfaction of claim.

2. Notice of deposit.

3. Interest on deposit not allowed to plaintiff after notice.

4. Procedure where plaintiff accepts deposit as satisfaction in part.

Procedure where he accepts it as satisfaction in full.

ORDER XXV.

Security for Costs.

1. When security for costs may be required from plaintiff. Residence out of the State.

2. Effect of failure to furnish security.

ORDER XXVI.

COMMISSIONS.

Commissions to examine witnesses.

1. Cases in which Court may issue commission to examine witness.

2. Order for commission.

3. Where witness resides within Court's jurisdiction.

4. Persons for whose examination may issue.

5. Commission or request to examine witness not within the State.

RULE.

6. Court to examine witness pursuant to commission.

7. Return of commission with depositions of witnesses.

8. When depositions may be read in evidence.

Commissions for local investigations.

9. Commissions to make local investigations.

10. Procedure of Commissioner.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

Commissions to examine accounts.

11. Commission to examine or adjust accounts.

12. Court to give Commissioner necessary instructions.

Proceedings and report to be evidence.

Court may direct further inquiry.

Commissions to make partitions.

13. Commission to make partition of immoveable property.

14. Procedure of Commissioner.

General provisions.

15. Expenses of Commission to be paid into Court.

16. Powers of Commissioners.

17. Attendance and examination of witnesses before Commissioner.

18. Parties to appear before Commissioner.

ORDER XXVII.

Suits by or against the Government or Public Officer in their official capacity.

1. Suits by or against Government.

2. Persons authorised to act for Government.

3. Plaints in suits by or against Government.

4. Agent for Government to receive process.

5. Fixing of day for appearance on behalf of Government.

6. Attendance of person able to answer questions relating to suit against Government.

7. Extension of time to enable public officer to make reference to Government.

8. Procedure in suits against public officer.

ORDER XXVIII.

Suits by or against Military Men.

1. Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them.

2. Persons so authorised may act personally or appoint pleader.

3. Service on person so authorised, or on his pleader, to be good service.

RULE.

ORDER XXIX.

Suits by or against Corporations.

1. Subscription and verification of pleading.
2. Service on corporation.
3. Power to require personal attendance of officer of corporation.

ORDER XXX.

Suits by or against Firms and Persons carrying on business in names other than their own.

1. Suing of partners in name of firm.
2. Disclosure of partners' names.
3. Service.
4. Right of suit on death of partner.
5. Notice in what capacity served.
6. Appearance of partners.
7. No appearance except by partners.
8. Appearance under protest.
9. Suits between co-partners.
10. Suit against person carrying on business in name other than his own.

ORDER XXXI.

Suits by or against Trustees, Executors and Administrators.

1. Representation of beneficiaries in suits concerning property vested in trusees, etc.
2. Joinder of trustee, executors and administrators.
3. Husband of married executrix not to join.

ORDER XXXII.

Suits by or against Minors and persons of Unsound Mind.

1. Minor to sue by next friend.
2. Where suit is instituted without next friend, plaint to be taken off the file.
3. Guardian for the suit to be appointed by Court for minor defendant.
4. Who may act as next friend or be appointed guardian for the suit.
5. Representation of minor by next friend or guardian for the suit.
6. Receipt by next friend or guardian for the suit of property under decree for minor.
7. Agreement or compromise by next friend or guardian for the suit.
8. Retirement of next friend.
9. Removal of the friend.
10. Stay of proceedings on removal, etc., of next friend.
11. Retirement, removal or death of guardian for the suit.
12. Course to be followed by minor plaintiff or applicant on attaining majority.

RULE.

13. Where minor co-plaintiff attaining majority desires to repudiate suit.

14. Unreasonable or improper suit.

15. Application of rules to persons of unsound mind.

16. Saving for Princes and Chiefs.

ORDER XXXIII.

Suits by Paupers.

1. Suits may be instituted *in forma pauperis.*

2. Contents of application.

3. Presentation of application.

4. Examination of applicant.

If presented by agent, Court may order applicant to be examined by commission.

5. Rejection of application.

6. Notice of day for receiving evidence of applicant's pauperism.

7. Procedure at hearing.

8. Procedure if application admitted.

9. Dispaupering.

10. Costs where pauper succeeds.

11. Procedure where pauper fails.

12. Government may apply for payment of court-fees.

13. Government to be deemed a party.

14. Copy of decree to be sent to Collector.

RULE.

15. Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

16. Costs.

ORDER XXXIV.

Suits relating to Mortgages of Immoveable Property.

1. Parties to suit for foreclosure, sale and redemption.

2. Preliminary decree in foreclosure-suit.

3. Final decree in foreclosure suit.

Power to enlarge time.

Discharge of debt.

4. Preliminary decree in suit for sale.

Power to decree sale in foreclosure-suit.

5. Final decree in suit for sale.

6. Recovery of balance due on mortgage.

7. Preliminary decree in redemption suit.

8. Final decree in redemption-suit.

Power to enlarge time.

9. Decree where nothing is found due or where mortgage has been overpaid.

10. Costs of mortgagee subsequent to decree.

11. Right of mesne mortgagee to redeem and foreclose.

RULE.

12. Sale of property subject to prior mortgage.

13. Application of proceeds.

14. Suit for sale necessary to bring mortgaged property to sale.

15. Charges.

ORDER XXXV.

Interpleader.

1. Plaint in int-rpleader-suit.

2. Payment of thing claimed into Court.

3. Procedure where defendant is suing plaintiff.

4. Procedure at first hearing.

5. Agents and tenants may not institute interpleader-suits.

6. Charge for plaintiff's costs.

ORDER XXXVI.

Special Case.

1. Power to state case for Court's opinion.

2. Where value of subject-matter must be stated.

3. Agreement to be filed and registered as suit.

4. Parties to be subject to Court's jurisdiction.

5. Hearing and disposal of case.

RULE.

2. Institution of summary suits upon bills of exchange etc.

3. Defendant showing defence on meris to have leave to appear.

4. Power to set aside decree.

5. Power to order bill etc. to be deposited with officer of Court.

6. Recovery of cost of noting non-accptance of dishonoured bill or note.

7. Procedure in suits.

ORDER XXXVII.

Summary procedure on Negotiable Instruments.

1. Application of order.

ORDER XXXVIII.

Arrest and Attachmeni before judgement.

Arrest before judgment.

1. Where defandant may be called upon to furnish security for appearance.

2. Security.

3. Procedure on application by surety to be discharged.

4. Procedure where defendant fails to furnish security or find fresh security.

Attachment before judgement.

5. Where defendant may be called upon to furnish security for production of property.

6. At achment where cause not shown or security not furnished.

7. Mode of making attach. ment.

RULE.

8. Investigation of claim to property attached before judgement.

9. Removal of attachment when security furnished or suit dismissed.

10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.

11. Property attached before judgment not to be re-attached in execution of decree.

12. Agricultural produce not attachable before judgment.

13. Small Cause Court not to attached mmoveable property.

ORDER XXXIX.

Temporary Injunctions and Interlocutroy Orders.

Temporary injunctions.

1. Case in which temporary injunction may be granted.

2. Injunction to restrain repetition or continuance of breach.

3. Before granting injunction, Court to direct notice to opposite party.

4. Order for injunction may be discharged, varied or set aside.

5. Injunction to corporation binding on its officers.

Interlocutory orders.

6. Power to order interim sale.

7. Detention, preservation, inspection, etc., of subject-matter of suit.

8. Application for such orders to be after notice.

RULE.

9. When party may be put in immediate possession of land the subject-matter of suit.

10. Deposit of money, etc., in Court.

ORDER XL.

Appointment of Receivers.

1. Appointment of receivers.

2 Remuneration.

3. Duties.

4. Enforcement of receiver's duty.

5. When collector may be appointed receiver.

ORDER XLI.

Appeals from Original Decrees.

1. Form of appeal.

What to accompany memorandum.

Contents of memorandum.

2. Grounds which may be taken in appeal.

3. Rejection or amendment of memorandum.

4. One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

Stay of proceedings and of execution.

5. Stay by Appellate Court.

Stay by Court which passed the decree.

RULE.

6. Security in case of order for execution of decree appealed from.

7. No security te be required from the Government or a public officer in certain cases.

8. Exercise of powers in appeal from order made in execution of decree.

Procedure on admission of appeal.

9. Registry of memorandum of appeal.

Register of appeal.

10. Appellate Court may require appellant to furnish security for cost.

Where appellant resides out of the State

11. Power to dismiss appeal without sendidg notice to lower Court.

12. Day for hearing appeal.

13. Appellate Court to give notice to Court whose decree appealed from.

Transmission of papers to Appellate Court.

Copies of exhibits in Court whose decree appealed from.

14. Publication and service of notice of day for hearing appeal.

Appellate Court may itself cause notice to be served.

15. Contents of notice.

Procedure on hearing.

16. Right to begin.

RULE.

17. Dismissal of appeal for appellant's default.

Hearing appeal *ex parte.*

18. Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

19. Re-admission of appeal dismissed for default.

20. Power to adjourn hearing, and direct persons appearing interested to be made respondent.

21. Re-hearing on application of respondent against whom *zx parte* decree made.

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.

Form of objection and provisions applicable thereto.

23. Remand of case by Appellate Court.

24. Where evidence on record sufficient, Appellate Court may determine case finally.

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1. Title of suits.
2. Discription of parties in particular cases.
3. Plaints.
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B.—PROCESS.

C.—DISCOVERY, INSPECTION AND ADMISSION.

D.—DECREES.

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G.—APPEAL, REFERENCE AND REVIEW.

H.—MISCELLANEOUS.

THE FIRST SCHEDULE.

ORDER I.

PARTIES TO SUITS.

Who may be joined as plaintiffs.

1. All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where, if such persons brought separate suits, any common question of law or fact would arise.

Power of Court to order separate trials.

2. Where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.

Who may be joined as defendants.

3. All persons may be joined as defendants against whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative, where if separate suits were brought against such persons any common question of law or fact would arise.

Court may give judgment for or against one or more of joint parties.

4. Judgment may be given without any amendment.—

(a) for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to;

(b) against such one or more of the defendants as may be found to be liable, according to their respective liabilities.

Defendant need not be interested in all the relief claimed.

5. It shall not be necessary that every defendant shall be interested as to all the relief claimed in any suit against him.

Joinder of parties liable on same contract.

6. The plaintiff may, at his option, join as parties to the the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

When plaintiff in doubt from whom redress is to be sought.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.

One person may sue or defend on behalf of all in same interest.

8. (1) Where there are numerous persons having the same interest in one suit, one or more of such persons may, with the permission of the Court, sue or be sued or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.

(2) Any person on whose behalf or for whose benefit a a suit is instituted or defended under sub-rule (1) may apply to the Court to be made a party to such suit.

Misjoinder and nonjoinder.

9. No suit shall be defeated by reason of the misjoinder or nonjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit in name of wrong plaintiff.

10. (1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

Court may strike out or add parties.

(2) The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the question involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any dis-

ability without his consent.

(4) Where a defendant is added, the plaint shall unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant.

Where defendant added, plaint to be amended.

(5) Subject to the provisions of the Limitation Act, section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons.

11. The Court may give the conduct of the suit to such person as it deems proper.

Conduct of suit.

12. (1) Where there are more plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding; and in like manner, where there are more defendants than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding.

Appearance of one of several plaintiffs or defendant for others.

(2) The authority shall be in writing signed by the party giving it and shall be filed in Court.

13. All objections on the ground of non-joinder or misjoinder of parties shall be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Objections to nonjoinder or misjoinder.

ORDER II.

FRAME OF SUIT.

1. Every suit shall as far as practicable be framed so as to afford ground for final decision upon the the subjects in dispute and to prevent further litigation concerning them.

Frame of suit.

2. (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plain-

Suit to include the whole claim.

tiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Relinquishment of part of claim.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Omission to sue for one of several reliefs.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation.—For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1905, 1906 and 1907 is due and unpaid. A sues B in 1908 only for the rent due for 1906. A shall not afterwards sue B for the rent due for 1905 or 1907.

Joinder of causes of action.

3. (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suits.

Only certain claims to be joined for recovery of immoveable property.

4. No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, except—

(a) claims for mesne profits or arrears of rent in respect of the property claimed or any part thereof;

(b) claims for damages for breach of any contract under which the property or any part thereof is held; and

(c) claims in which the relief sought is based on the same cause of action:

Provided that nothing in this rule shall be deemed to prevent any party in a suit for foreclosure or redemption from asking to be put into possession of the mortgaged property.

5. No claim by or against an executor, administrator or heir, as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Claims by or against executor, administrator, or heir.

6. Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.

Power of Court to order sepate trials.

7. All objections on the ground of mis-joinder of causes of action shall be taken at the earliest possible opportunity and, in all cases where issues are settled at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.

Objections as to mis-joinder.

ORDER III.

RECOGNISED AGENTS AND PLEADERS.

1. Any appearance, application or act in or to any Court, required or authorised by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognised agent, or by a pleader duly appointed to act on his behalf:

Appearances, etc., may be in person, by recognised agent or by pleader.

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. The recognised agents of parties by whom such appearances, applications and acts may be made or done are—

Recognised agents.

(a) persons holding powers-of-attorney, authorising them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or acts is made or done, in matters connected with such trade or business only, where no other agent is expressly authorised to make and do such appearances, appli-

cations and acts.

Service of process on recognised agent.

3. (1) Processes served on the recogni ed agent of a party shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

(2) The provisions for the service of process on a party to a suit shall apply to the service of process on his recognised agent.

Appointment of pleader.

4. (1) The appointment of a pleader to make or do any appearance, application or act for any person shall be in writing, and shall be signed by such person or by his recognised agent or by some other person duly authorised by power-of-attorney to act in this behalf.

(2) Every such appointment, when accepted by a pleader, shall be filed in Court, and shall be considered to be in force until determined with the leave of the Court, by a writing signed by the client or the pleader, as the case may be, and filed in Court, or until the client or the pleader dies or until all proceedings in the suit are ended so far as regards the client.

(3) [1][No advocate shall be entitled to make any application or act for any person unless he presents an appointment in writing, duly signed by such person or his recognised agent or by some other agent duly authorised by power-of-attorney to act in this behalf].

Service of process on pleader.

5. Any process served on the pleader of any party or left at the office or ordinary residence of such pleader, and whether the same is for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents, and, unless the Court otherwise directs, shall be as effectual for all purposes as if the same had been given to or served on the party in person.

Agent to accept service.

6. (1) Besides the recognised agents described in rule 2 any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Appointment to be in writing and to be filed in Court.

(2) Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument or, if the appointment is general, a certified copy thereof shall be filed in Court.

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[1]Sub-Rule (3) substituted *vide* Act XXII of 1989 published in Government Gazette dated 8th Poh 1989.

ORDER IV.

INSTITUTION OF SUITS.

Suit to be commenced by plaint.

1. (1) Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

(2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable.

Register of suits.

2. The Court shall cause the particulars of every suit to be entered in a book to be kept for the purpose and called the register of civil suits. Such entries shall be numbered in every year according to the order in which the plaints are admitted.

ORDER V.

ISSUE AND SERVICE OF SUMMONS.

Issue of Summons.

Summons.

1. (1) When a suit has been duly instituted a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear—

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

Copy or statement annexed to summons.

2. Every summons shall be accompanied by a copy of the plaint, or, if so permitted, by a concise statement.

Court may order defendant or plaintiff to appear in person.

3. (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

No party to be ordered to appear in person unless resident within certain limits.

4. No party shall be ordered to appear in person unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two-hundred miles distance from the courthouse.

Summons to be either to settle issues or for final disposal.

5. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant

6. The day for the appearance of the defendant shall be fixed with reference to the current business of the Court, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

Summons to order defendant to produce documents relied on by him.

7. The summons to appear and answer shall order the defendant to produce all documents in his possession or power upon which he intends to rely in support of his case. ✓

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

8. Where the summons is for the the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

Delivery or transmission of summons for service.

9. (1) Where the defendant resides within the jurisdiction of the Court in which the suit is instituted, or has an agent resident within that jurisdiction who is empowered to accept

the service of the summons, the summons shall, unless the Court otherwise directs, be delivered or sent to the proper officer to be served by him or one of his subordinates.

(2) The proper officer may be an officer of a Court other than that in which the suit is instituted, and, where he is such an officer, the summons may be sent to him by post or in such other manner as the Court may direct.

Mode of service.

10. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

Service on several defendants.

11. Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

Service to be on defendant in person when practicable or on his agent.

12. Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

Service on agent by whom defendant carries on business.

13. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons is issued, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service.

Service on agents in charge in suits for immoveable property.

14. Wherein a suit to obtain relief respecting, or compensation for wrong to, immoveable property, service cannot be made on the defendant in person, and the defendant has no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property.

Where service may be on male member of defendant's family.

15. Where in any suit the defendant cannot be found and has no agent empowered to accept service of the summons on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

Person served to sign acknowledgment.

16. Where the serving officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

17. Where the defendant or his agent or such other per-

Procedure when defendant refuses to accept service, or cannot be found.

son as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defendant, and there is no agent, empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain, and shall then return the original to the Court from which it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house was identified and in whose presence the copy was affixed.

Endorsement of time and manner of service.

18. The serving officer shall, in all cases in which the summons has been served under rule 16, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons was served, and the name and address of the person, (if any) identifying the person served and witnessing the delivery or tender of the summons.

Examination of serving officer.

19. Where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Court, touching his proceedings, and may make such further inquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

20. (1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court-house, and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

Effect of substituted service.

(2) Service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

(3) Where service is substitued by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Where service substituted, time for appearance to be fixed.

21. A summons may be sent by the Court by which it is issued, either by one of its officers or by post to any Court (not being the High Court) having jurisdiction in the place where the defendant resides.

Service of summons where defendant resides within jurisdiction of another Court.

22. Omitted.

23. The Court to which a summons is sent under rule 21 shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue, together with the record (if any) of its proceedings with regard thereto.

Duty of Court to which summons is sent.

24. Where the defendant is confined in a prison, the summons shall be delivered or sent by post or otherwise to the officer in charge of the prison for service on the defendant.

Service on defendant in prison.

25. Where the defendant resides out of the State and has no agent in the State empowered to accept service, the summons shall be addressed to the defendant at the place where he is residing and sent to him by post, if there is postal communication between such place and the place where the Court is situate.

Service where defendant resides out of the State and has no agent

26. Omitted.

27. Where the defendant is a public officer, or is the servant of a railway company or local authority, the Court may, if it appears to it that the summons may be most conveniently so served, send it for service on the defendant to the head of the office in which he is employed, together with a copy to be retained by the defendant.

Service on civil public officer or on servant of railway company or local authority.

28. Where the defendant is a soldier, the Court shall send the summons for service to his commanding officer together with a copy to be retained by the defendant.

Service on soldiers.

29. (1) Where a summons is delivered or sent to any person for service under rule 24, rule 27 or rule 28, such person shall be bound to serve it, if possible, and to return it under his signature, with the written aknowledgment of the defendant, and such signature shall be deemed to be evidence of service.

Duty of person to whom summons is delivered or sent for service.

(2) Where from any cause service is impossible, the sum-

mons shall be retunred to the Court with a full statement of such cause and of the steps taken to procure service, and such statement shall be deemed to be evidence of non-service.

Substitution of letter for summons

30. (1) The Court may, notwithstanding anything hereinbefore contained, substitute for a summons a letter singed by the Judge or such officer as he may appoint in this behalf, where the defendant is, in the opinion of the Court of a rank entitling him to such mark of consideration.

(2) A letter substituted under sub-rule (1) shall contain all the particulars required to be stated in a summons, and, subject to the provisions of sub-rule (3), shall be treated in all respects as a summons.

(3) A letter so substituted may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; and, where the defendant has an agent empowered to accept service, the letter may be delivered or sent to such agent.

ORDER VI.

PLEADING GENERALLY.

Pleading.

1. "Pleading" shall mean plaint or written statement.

Pleading to state material facts and not evidence.

2. Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be expressed in figures.

Forms of pleading.

3. The forms in Appendix A when applicable, and where they are not applicable forms of the like character, as nearly as may be, shall be used for all pleadings.

Particulars to be given where necessary.

4. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items, if ecessary) shall be stated in the pleading.

5. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

Further and better statement, or particulars.

6. Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be, and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

Condition precedent.

7. No pleading shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

Departure.

8. Where a contract is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract alleged or of the matters of fact from which the same may be implied, and not as a denial of the legality or sufficiency in law of such contract.

Denial of contract.

9. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material.

Effect of document to be stated.

10. Wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

Malice, knowledge etc.

11. Wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.

Notice.

12. Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more con-

Implied contract, or relation

tracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

Presumptions of law.

13. Neither party need in any pleading allege any matter of a fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied (*e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill and not for the consideration as a substantive ground of claim).

Pleading to be signed.

14. Every pleading shall be signed by the party and his pleader (if any): Provided that where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading, it may be, signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.

Verification of pleadings.

15. (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case.

(2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

Striking out pleadings.

16. The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit.

Amendment of pleadings.

17. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Failure to amend after order.

18. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited then **within fourteen** days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the Court.

ORDER VII.

PLAINT.

Particulars to be containd in plaint.

1. The plaint shall contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of residence of the plaintiff;

(c) the name, description and place of residence of the defendant, so far as they can be ascertained;

(d) where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) the facts constituting the cause of action and when it arose;

(f) the fact showing that the Court has jurisdiction;

(g) the relief which the plaintiff claims;

(h) where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) a statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees, so far as the case admits.

In money suits

2. Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed:

But where the plaintiff sues for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, the plaint shall state approximately the amount sued for.

Where the subject-matter of the suit is immoveable property.

3. Where the subject-matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

When plaintiff sues as representative.

4. Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject-matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

Defendant's interest and liability to be shown.

5. The plaint shall show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Ground of exemption from limitation law.

6. Where the suit is instituted after the expiration of the period prescribed by the law of limitation the plaint shall show the ground upon which exemption from such law is claimed.

Relief to be specifically stated.

7. Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement.

Relief founded on separate grounds.

8. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they shall be stated as far as may be separately and distinctly.

Procedure on admitting plaint.

9. (1) The plaintiff shall endorse on the plaint, or annex thereto, a list of the documents (if any) which he has produced along with it; and, if the plaint is admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief claimed in the suit, in which case he shall present such statements.

Concise statements.

(2) Where the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

(3) The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

(4) The chief ministerial officer of the Court shall sign such list and copies or statements if, on examination, he finds them to be correct.

Return of plaint.

10. (1) The plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.

Procedure on returning plaint.

(2) On returning a plaint the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it.

Rejection of plaint.

11. The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action:

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so:

(d) where the suit appears from the statement in the plaint to be barred by any law.

Procedure on rejecting plaint.

12. Where a plaint is rejected the Judge shall record an order to that effect with the reasons for such order.

Where rejection of plaint does not preclude presentation of fresh plaint.

13. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

Documents relied on in plaint.

Production of document on which plaintiff sues.

14. (1) Where a plaintiff sues upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

List of other documents.

(2) Where he relies on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power.

15. Where any such document is not in the possession or power of the plaintiff, he shall, if possible, state in whose possession or power it is.

Suits on lost negotiable instruments.

16. Where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may pass such decree as it would have passed if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

17. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, where the document on which the plaintiff sues is an entry in a shop-book or other account in his possession

or power, the plaintiff shall produce the book or account at the time of filing the plaint, together with a copy of the entry on which he relies.

(2) The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original, shall, if it is found correct, certify it to be so and return the book to the plaintiff and cause the copy to be filed.

Original entry to be marked and returned.

18. (1) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Inadmissibility of document not produced when plaint filed.

(2) Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory.

ORDER VIII.

WRITTEN STATEMENT AND SET-OFF.

1. The defendant may, and, if so required by the Court, shall, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.

Written statement.

2. The defendant must raise by his pleading all matters which show the suit not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence as, if not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as, for instance, fraud, limitation, release, payment, performance, or facts showing illegality.

New facts must be specially pleaded.

3. It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

Denial to be specific.

4. Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if

Evasive denial.

it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegeation is made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances.

Specific denial

5. Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

Particulars of set-off to be given in written statement.

6. (1) Where in a suit for the recovery of money the defendant claims to set-off against the paintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, present a written statement containing the particulars of the debt sought to be set-off.

Effect of set-off.

(2) The written statement shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in respect both of the original claim and of the set-off: But this shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

(3) The rules relating to a written statement by a defendant apply to a written statement in answer to a claim of set-off.

Illustrations.

(*a*) A bequeaths Rs. 2,000 to B and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D; then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(*b*) A dies intestate and in debt to B. C takes out administration to A's effects and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(*c*) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set off. The amount not being ascertained cannot be set off.

(*d*) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set off.

(*e*) A sues B for compensation on account of trespass. B holds a promissory note for Rs. 1,000 from A and claims to set off that amount against any sum that A may recover in the suit. B may do so, for, as soon as A recovers, both sums are definite pecuniary demands.

(*f*) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(*g*) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(*h*) A owes the partnership firm of B and C Rs. 1,000. B dies, leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

Defence or set-off founded on separate grounds.

7. Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they shall be stated, as far as may be, separately and distinctly.

New ground of defence.

8. Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.

Subsequent pleadings.

9. No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court and upon such terms as the Court thinks fit, but the Court may at any time require a written statement or additional written statement from any of the parties and fix a time for presenting the same.

Procedure when party fails to present written statement called for by Court.

10. Where any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER IX.

APPEARANCE OF PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

Parties to appear on day fixed in summons for defendant to appear and answer.

1. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard unless the hearing is adjourned to a future day fixed by

the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay costs.

2. Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may make an order that the suit be dismissed:

Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer he attends in person or by agent when he is allowed to appear by agent.

Where neither party appears, suit to be dismissed.

3. Where neither party appears when the suit is called on for hearing the Court may make an order that the suit be dismissed.

Plaintiff may bring fresh suit or Court may restore suit to file.

4. Where a suit is dismissed under rule 2 or rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit; or he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his not paying the court-fee and postal charges (if any) required within the time fixed before the issue of the summons, or for his non-appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

Dismissal of suits where plaintiff, after summons returned unserved, fails for three months to apply fresh summons.

[1][**5.** (1) Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of three months from the date of return made to the Court by the officer ordinarily certifying to the court returns made by the serving officers, to apply for the issue of a fresh summons the Court shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that—

(a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or

(b) such defendant is avoiding service of process, or

(c) there is any other sufficient cause for extending the time,

in which the Court may extend the time for making such application for such period as it thinks fit.]

(2) In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

[1]Rule 5 (i) substituted *vide* Act IV of 1988 published in the Government Gazette dated 18th Har 1988.

6. (1) Where the plaintiff appears and the defendant does not appear when the suit is called on for hearing, then—

Procedure when only plaintiff appears

(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*;

When summons duly served.

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant;

When summons not duly served.

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

When summons served but not in due tim

(2) Where it is owing to the plaintiff's default that the summons was not duly served or was not served in sufficient time, the Court shall order the plaintiff to pay the costs occasioned by the postponement.

7. Where the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing and assigns good cause for previous non-appearance.

8. Where the defendant appears and the plaintiff does not appear when the suit is called on for hearing, the Court shall make an order that the suit be dismissed, unless the defendant admits the claim, or part thereof, in which case the the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Procedure where defendant only appears.

9. (1) Where a suit is wholly or partly dismissed under rule 8, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfies the Court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the Court shall make an orders setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

Decree against plaintiff by default bars fresh suit.

(2) No order shall be made under this rule unless notice of the application has been served on the opposite party.

Procedure in case of non-attendance of one of several plaintiffs.

10. Where there are more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, or make such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

11. Where there are more defendants than one, and one or more of them appear and the others do not appear, the suit shall proceed, and the Court shall, at the time of pronouncing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequance of non-attendance, without sufficient cause shown, of party ordered to appear in person.

12. Where a plaintiff or defendant, who has been ordered to appear in person, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing rules applicable to plaintiffs and defendants, respectively, who do not appear.

Setting aside Decrees ex parte.

Setting aside decree *ex parte* against defendant.

13. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also.

No decree to be set aside without notice to opposite party.

14. No decree shall be set aside on any such application as aforesaid unless notice thereof has been served on the opposite party.

ORDER X.

EXAMINATION OF PARTIES BY THE COURT.

Ascertainment whether allegations in pleadings are admitted or denied.

1. At the first hearing of the suit the Court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Oral examination of party or companion of party.

2. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written.

3. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to answer.

4. (1) Where the pleader of any party who appears by a pleader or any such person accompanying a pleader as is referred to in rule 2 refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day and direct that such party shall appear in person on such day.

(2) If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.

ORDER XI.

DISCOVERY AND INSPECTION.

Discovery by interrogatories.

1. In any suit the plaintiff or defendant by leave of the Court may deliver interrogatories in writing for the examination of the opposite parties or any one or more of such parties,

and such interrogatories when delivered shall have a note at the foot thereof stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the suit shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

Particular interrogatories to be submitted.

2. On an application for leave to deliver interrogatories, the particular interrogatories proposed to be delivered shall be submitted to the Court. In deciding upon such application, the Court shall take into account any offer, which may be made by the party sought to be interrogated to deliver particulars, or to make admissions, or to produce documents relating to the matters in question, or any of them, and leave shall be given as to such only of the interrogatories submitted as the Court shall consider necessary, either for disposing fairly of the suit or for saving costs.

Costs of interrogatories.

3. In adjusting the costs of the suit inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

Form of interrogatories.

4. Interrogatories shall be in Form No. 2 in Appendix C, with such variations as circumstances may require.

Corporations.

5. Where any party to a suit is a corporation or a body of persons, whether incorporated or not, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation or body, and an order may be made accordingly.

Objection to interrogatories by answer.

6. Any objection to answering any interrogatory on the ground that it is scandalous or irrelevant or not exhibited *bona fide* for the purpose of the suit, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

7. Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

Setting aside and striking out interrogatories.

8. Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as the Court may allow.

Affidavit in answer, filing.

9. An affidavit in answer to interrogatroies shall be in Form No. 3 in Appendix C, with such variations as circumstances may require.

Form of affidavit in answer.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court.

No exception to be taken.

11. Where any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *viva voce* examination, as the Court may direct.

Order to answer or answer further.

12. Any party may, without filing any affidavit, apply to the Court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court may either refuse or adjourn the same, if satisfied that such discovery is not necessary, or not necessary at that stage of the suit, or make such order, either generally or limited to certain classes of documents, as may, in its discretion, be thought fit: Provided that discovery shall not be ordered when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Application for discovery of documents.

13. The affidavit to be made by a party against whom such order as is mentioned in the last preceding rule has been made, shall specify which (if any) of the documents therein mentioned he objects to produce, and it shall be in Form No. 5 in Appendix C, with such variations as circumstances may require.

Affidavit of documents.

14. It shall be lawful for the Court, at any time, during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating

Production of documents

to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

Inspection of documents referred to in pleadings or affidavits.

15. Every party to a suit shall be entitled at any time to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his pleader, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such suit unless he shall satisfy the Court that such document relates only to his own title, he being a defendant to the suit, or that he had some other cause or excuse which the Court shall deem sufficient for not complying with such notice, in which case the Court may allow the same to be put in evidence on such terms as to costs and otherwise as the Court shall think fit.

Notice to produce.

16. Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.

Time for inspection when notice given.

17. The party to whom such notice is given shall, within ten days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his pleader, or in the case of bankers' books or other books of account or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in Form No. 8 in Appendix C, with such variations as circumstances may require.

Odrer for inspection.

18. (1) Where the party served with notice under rule 15 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his pleader, the Court may, on the application of the party desiring it, make an order for inspection in such place and in such manner as it may think fit: Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

(2) Any application to inspect documents, except such as are referred to in the pleadings, particulars or affidavits of the

party against whom the application is made or disclosed in his affidavit of documents, shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party. The Court shall not make such order for inspection of such documents when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs.

Verified copies.

19. (1) Where inspection of any business books is applied for, the Court may, if it thinks fit, instead of ordering inspection of the original books order a copy of any entries therein to be furnished and verified by the affidavit of some person who has examined the copy with the original entries, and such affidavit shall state whether or not there are in the original book any and what erasures, interlineations or alterations: Provided that, notwithstanding that such copy has been supplied, the Court may order inspection of the book from which the copy was made.

(2) Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the Court to inspect the document for the purpose of deciding as to the validity of the claim of privilege.

(3) The Court may, on the application of any party to a suit at any time, and whether an affidavit of documents shall or shall not have already been ordered or made, make an order requiring any other party to state by affidavit whether any one or more specific documents, to be specified in the application, is or are, or has or have at any time been, in his possession or power; and, if not then in his possession, when he parted with the same and what has become thereof. Such application shall be made on an affidavit stating that in the belief of the deponent the party against whom the application is made has, or has at some time had, in his possession or power the document or documents specified in the application, and that they relate to the matters in question in the suit, or to some of them.

Premature discovery.

20. Where the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any issue or question in dispute in the suit should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be

determined first, and reserve the question as to the discovery or inspection.

Non-compliance with order for discovery.

21. Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and an order may be made accordingly.

Using answer to interrogatories at trial.

22. Any party may, at the trial of a suit, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always that in such case the Court may look at the whole of the answers, and if it shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, it may direct them to be put in.

Order to apply to minors.

23. This Order shall apply to minor plaintiffs and defendants, and to the next friends and guardians for the suit of persons under disability.

ORDER XII.

ADMISSIONS.

Notice of admission of case.

1. Any party to a suit may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

Notice to admit documents.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs; and no costs of proving any document shall be allowed unless such notice is given, except where the omission to give the notice is, in the opinion of the Court, a saving of expense.

Form of notice.

3. A notice to admit documents shall be in Form No. 9 in Appendix C, with such variations as circumstances may require.

Notice to admit facts.

4. Any party may, by notice in writing, at any time not later than nine days before the day fixed for the hearing, call on any other party to admit, for the purposes of the suit only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within six days after service of such notice, or within such further time as may be allowed by the Court, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the suit may be, unless the Court otherwise directs: Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular suit, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: Provided also that the Court may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

Form of admissions.

5. A notice to admit facts shall be in Form No. 10 in Appendix C, and admissions of facts shall be in Form No. 11 in Appendix C, with such variations as circumstances may require.

Judgment on admission.

6. Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties: and the Court may upon such application make such order, or give such judgment as the Court may think just.

Affidavit of signature.

7. An affidavit of the pleader or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof is required.

Notice to produce documents.

8. Notice to produce documents shall be in Form No. 12 in Appendix C, with such variations as circumstances may require. An affidavit of the pleader, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

Costs.

9. If a notice to admit or produce specifies documents which are not necessary, the cost occasioned thereby shall be borne by the party giving such notice.

ORDER XIII.

PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

Documentary evidence to be produced at first hearing.

1. (1) The parties or their pleaders shall produce, at the first hearing of the suit, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court has ordered to be produced.

(2) The Court shall receive the documents so produced: Provided that they are accompanied by an accurate list thereof prepared in such form as the High Court directs.

Effect of non-production of documents.

2. No documentary evidence in the possession or power of any party which should have been but has not been produced in accordance with the requirements of rule 1 shall be received at any subsequent stage of the proceedings unless good cause is shown to the satisfaction of the Court for the non-production thereof; and the Court receiving any such evidence shall record the reasons for so doing.

Rejection of irrelevant or inadmissible documents.

3. The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

Endorsements on documents admitted in evidance.

4. (1) Subject to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in the suit the following particulars, namely:—

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or record, and a copy thereof has been substituted for the original under the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed or initialled by the Judge.

Endorsements on copies of admitted entries in books, accounts and record.

5. (1) Save in so far as is otherwise provided by the Bankers' Books Evidence Act, where a document admitted in evidence in the suit is an entry in a letter-book or a shop-book or other account in current use, the party on whose behalf the book or account

is produced may furnish a copy of the entry.

(2) Where such a document is an entry in a public record produced from a public office or by a public officer, or an entry in a book or account belonging to person other than a party on whose behalf the book or account is produced, the Court may require a copy of the entry to be furnished—

(a) where the record, book or account is produced on behalf of a party, then by that party, or

(b) where the record, book or account is produced in obedience to an order of the Court acting of its own motion, then by either or any party.

(3) Where a copy of an entry is furnished under the foregoing provisions of this rule, the Court shall, after causing the copy to be examined, compared and certified in manner mentioned in rule 17 of Order VII, mark the entry and cause the book, account or record in which it occurs to be returned to the person producing it.

Endorsements on documents rejected as inadmissible in evidence.

6. Where a document relied on as evidence by either party is considered by the Court to be inadmissible in evidence, there shall be endorsed thereon the particulars mentioned in clauses (a), (b) and (c) of rule 4, sub-rule (1), together with a statement of its having been rejected, and the endorsement shall be singed or initialled by the Judge.

Recording of admitted and return of rejected documents.

7. (1) Every document which has been admitted in evidence, or a copy thereof where a copy has been substituted for the original under rule 5, shall form part of the record of the suit.

(2) Documents not admitted in evidence shall not form part of the record and shall be returned to the persons respectively producing them.

Court may order any document to be impounded.

8. Notwithstanding anything contained in rule 5 or rule 7 of this Order or in rule 17 of Order VII, the Court may, if it sees sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

Return of admitted documents.

9. (1) Any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record shall, unless the document is impounded under rule 8, be entitled to receive back the same,—

(a) where the suit is one in which an appeal is not allowed, when the suit has been disposed of, and

(b) where the suit is one in which an appeal is allowed, when the Court is satisfied that the time for preferring an appeal has elapsed and that no appeal has been preferred or, if an appeal has been preferred, when the appeal has been disposed of:

Provided that a document may be returned at any time earlier than that prescribed by this rule if the person applying therefor delivers to the proper officer a certified copy to be substituted for the original and undertakes to produce the original if required to do so:

Provided also that no document shall be returned which, by force of the decree, has become wholly void or useless.

(2) On the return of a document admitted in evidence, a receipt shall be given by the person receiving it.

Court may send for papers from its own records or from other Courts.

10. (1) The Court may of its own motion, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

(2) Every application made under this rule shall (unless the Court otherwise directs) be supported by an affidavit showing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

(3) Nothing contained in this rule shall be deemed to enable the Court to use in evidence any document which under the law of evidence would be inadmissible in the suit.

Provisions as to documents applied to material objects.

11. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

ORDER XIV.

SETTLEMENT OF ISSUES AND DETERMINATION OF SUIT ON ISSUES OF LAW OR ON ISSUES AGREED UPON.

Framing of issues

1. (1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to

sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds: (a) issues of fact, (b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

Issues of law and of fact.

2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Materials from which issues may be framed.

3. The Court may frame the issues from all or any of the following materials:—

(a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues.

4. Where the Court is of opinion that the issues cannot be correctly framed without the examination of some person not before the Court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

Powers to amend, and strike out, issues.

5. (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed.

(2) The Court may also, at any time before passing a

decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issues.

6. Where the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing that, upon the finding of the Court in the affirmative or the negative of such issue,—

(a) a sum of money specified in the agreement or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement;

(b) some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct; or

(c) one or more of the parties shall do or abstain from doing some particular act specified in the agreement and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith, may pronounce judgment.

7. Where the Court is satisfied, after making such inquiry as it deems proper,—

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided,

it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court;

and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and, upon the judgment so pronounced, a decree shall follow.

ORDER XV.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

Parties not at issue.

1. Where at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

One of several defendants not at issue.

2. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once pronounce

judgment for or against such defendant and the suit shall proceed only against the other defendants.

Parties at issue.

3. (1) Where the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court is satisfied that no further argument or evidence than the parties can at once adduce is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues, and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them objects.

(2) Where the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

Failure to produce evidence.

4. Where the summons has been issued for the final disposal of the suit and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues, adjourn the suit for the production of such evidence as may be necessary for its decision upon such issues.

ORDER XVI.

SUMMONING AND ATTENDANCE OF WITNESSES.

Summons to attend to give evidence or produce documents.

1. At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witness to be paid into Court on applying for summons.

2. (1) The party applying for a summons shall, before the summons is granted and within a period to be fixed, pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned in passing to and from the Court in which he is required to attend, and for one day's attendance.

(2) In determining the amount payable under this rule, the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

Experts.

(3) [1][Where the Court is subordinate to the High Court] regard shall be had, in fixing the scale of such expenses, to any rules made in that behalf.

Scale of expenses.

3. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Tender of expenses to witness.

4. (1) Where it appears to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses or reasonable remuneration, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account, and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Procedure where insufficient sum paid in.

(2) Where it is necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of such party; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses of witnesses detained more than one day.

5. Every summons for the attendnace of a person to give evidence or to produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document, which the person summoned is called on to produce, shall be described in the sum-

Time, place and purpose of attendance to be specified in summons.

[1]Inserted *vide* Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

mons with reasonable accuracy.

Summons to produce document.

6. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he causes such document to be produced instead of attending personally to produce the same.

Power to require persons present in Court to give evidence or produce document.

7. Any person present in Court may be required by the Court to give evidence or to produce any document then and there in his possession or power.

Summons how served.

8. Every summons under this order shall be served as nearly as may be in the same manner as a a summons to a defendant, and the rules in Order V as to proof of service shall apply in the case of all summonses served under this rule.

Time for serving summons

9. Service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendnace is required.

Procedure where witness fail to comply with summons.

10. (1) Where a person to whom a summons has been issued either to attend to give evidence or to produce a document fails to attend or to produce the document in compliance with such summons, the Court shall, if the certificate of the serving-officer has not been verified by affidavit, and may, if it has been so verified, examine the serving-officer on oath, or cause him to be so examined by another Court, touching the service or non-service of the summons.

(2) Where the Court sees reason to believe that such evidence or production is material, and that such person has, without lawful excuse, failed to attend or to produce the document in compliance with such summons or has intentionally avoided service, it may issue a proclamation requiring him to attend to give evidence or to produce the document at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door or other conspicuous part of the house in which he ordinarily resides.

(3) In lieu of or at the time of issuing such proclamation, or at any time afterwards, the Court may, in its discretion, issue a warrant, either with or without bail, for the arrest of such person, and may make an order for the attachment of

his property to such amount as it thinks fit, not exceeding the amount of the costs of attachement and of any fine which may be imposed under rule 12:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness appears, attachmeut may be withdrawn.

11. Where, at any time after the attachment of his property, such person appears and satisfies the Court,—

(a) that he did not, without lawful excuse, fail to comply with the summons or intentionally avoid service, and,

(b) where he has failed to attend at the time and place named in a proclamation issued under the last preceding rule, that he had no notice of such proclamation in time to attend,

the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

procedure if witness fails to appear.

12. The Court may, where such person does not appear, or appears but fails so to satisfy the Court, impose upon him such fine not exceeding five hundred rupees as it thinks fit, having regard to his condition in life and all the circumstances of the case, and may order his property, or any part thereof, to be attached and sold or, if already attached under rule 10, to be sold for the purpose of satisfying all costs of such attachment, together with the amount of the said fine, if any:

Provided that, if the person whose attendance is required pays into Court the costs and fine aforesaid, the Court shall order the property to be released from attachment.

Mode of attachment

13. The provisions with regard to the attachment and sale of property in the execution of a decree shall, so far as they are applicable, be deemed to apply to any attachment and sale under this order as if the person whose property is so attached were a judgment-debtor.

Court may of its own accord summon as witnesses strangers to suit.

14. Subject to the provisions of this Code as to attendance and appearance and to any law for the time being in force, where the Court at any time thinks it necessary to examine any person other than a party to the suit and not called as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Duty of persons summoned to give evidence or produce document.

15. Subject as last aforeasaid, whoever is summoned to appear and give evidence in a suit shall attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document shall either attend to produce it, or cause it to be produced, at such time and place.

When they may depart.

16. (1) A person so summoned and attending shall, unless the Court otherwise directs, attend at each hearing until the suit has been disposed of.

(2) On the application of either party and the payment through the Court of all necessary expenses (if any), the Court may require any person so summoned and attending to furnish security to attend at the next or any other hearing or until the suit is disposed of and, in default of his furnishing such security, may order him to be detained in the civil prison.

Application of rules 10 to 13.

17. The provisions of rules 10 to 13 shall, so far as they are applicable, be deemed to apply to any person who having attended in compliance with a summons departs, without lawful excuse, in contravention of rule 16.

Procedure where witness apprehended cannot give evidence or produce document.

18. Where any person arrested under a warrant is brought before the Court in custody and cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and, on such bail or security being given, may release him, and, in default of his giving such bail or security, may order him to be detained in the civil prison.

No witness to be ordered to attend in person unless resident within certain limits.

19. No one shall be ordered to attend in person to give evidence unless he resides—

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at a place less than fifty or (where there is railway communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the Court-house.

20. Where any party to a suit present in Court refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his possession or power, the Court may pronounce judgment against him or make such order in relation to the suit as it thinks fit.

Consequence of refusal of party to give evidence when called on by Court.

21. Where any party to a suit is required to give evidence or to produce a document, the provisions as to witnesses shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

ORDER XVII.

ADJOURNMENTS.

1. (1) The Court may, if sufficient cause is shown at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Court may grant time and adjourn hearing.

(2) In every such case the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

Costs of adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing beyond the following day to be necessary for reasons to be recorded.

2. Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit.

Procedure if parties fail to appear on day fixed.

3. Where any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

Court may proceed notwithstanding either party fails to produce evidence, etc.

ORDER XVIII.

HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

Right to begin.

1. The plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks in which case the defendant has the right to begin.

Statement and production of evidence.

2. (1) On the day fixed for the hearing of the suit or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

(2) The other party shall then state his case and produce his evidence (if any) and may then address the Court generally on the whole case.

(3) The party beginning may then reply generally on the whole case.

Evidence where several issues.

3. Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party and, in the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence and the other party may then reply especially on the evidence so produced by the party beginning but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open Court.

4. The evidence of the witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge.

How evidence shall be taken in appealable cases

5. In cases in which an appeal is allowed the evidence of each witness shall be taken down in writing in the language of the Court by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and the Judge, shall, if necessary, correct the same, and shall sign it.

When deposition to be interpreted,

6. Where the evidence is taken down in a language different from that in which it is given, and the witness does not understand the language in which it is taken down, the evidence as

taken down in writing shall be interpreted to him in the language in which it is given.

Evidence under section 138.

7. Evidence taken down under section 138 shall be in the form prescribed by rule 5 and shall be read over and signed and, as occasion may require, interpreted and corrected as if it were evidence taken down under that rule.

Memorandum when evidence not taken down by Judge.

8. Where the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

When evidence may be taken in English.

9. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down.

Any particular question and answer may be taken down.

10. The Court may, of its own motion or on the application of any party or his pleader, take down any particular question and answer, or any objection to any question if there appears to be any special reason for so doing.

Question subjected to and allowed by Court.

11. Where any question put to a witness is objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Remarks on demeanour of witnesses.

12. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Memorandum of evidence in unappealable cases.

13. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge and shall form part of the record.

Judge unable to make such memorandum to record reasons of his inability.

14. (1) Where the Judge is unable to make a memorandum as required by this Order, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dicta-

tion in open Court.

(2) Every memorandum so made shall form part of the record.

Power to deal with evidence taken before another Judge.

15. (1) Where a Judge is prevented by death, transfer or other cause from concluding the trial of a suit, his successor may deal with any evidence or memorndum taken down or made under the foregoing rules as if such evidence or memorandum had been taken down or made by him or under his direction under the said rules and may proceed with the suit from the stage at which his predecessor left it.

(2) The provisions of sub-rule (1) shall, so far as they are applicable, be deemed to apply to evidence taken in a suit transferred under section 24.

Power to examine witness immediately.

16. (1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit.

Court may recall and examine witness.

17. The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

Power of Court to inspect.

18. The Court may at any stage of a suit inspect any property or thing concerning which any question may arise.

ORDER XIX.

AFFIDAVITS.

Power to order any point to be proved by affidavit.

1. Any Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing,

on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorising the evidence of such witness to be given by affidavit.

Power to order attendance of deponent for cross-examination.

2. (1) Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the deponent.

(2) Such attendance shall be in Court, unless the deponent is exempted from personal appearance in Court, or the the Court otherwise directs.

Matters to which affidavits shall be confined

3. (1) Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted: provided that the grounds thereof are stated.

(2) The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party filing the same.

ORDER XX.

JUDGMENT AND DECREE.

Judgment when pronounced

1. The Court, after the case has been heard, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge 's predecessor.

2. A Judge may pronounce a judgment written but not pronounced by his predecessor.

Judgment to be signed

3. The Judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it and, when once signed, shall not afterwards be altered or added to, save as provided by section 152 or on review.

Judgments of Small Cause Courts.

4. (1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

Judgement of other Courts.

(2) Judgments of other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to state its decision on each issue.

5. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit.

Contents of decree.

6. (1) The decree shall agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.

Date of decree.

7. The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Procedure where Judge has vacated office before signing decree.

8. Where a Judge has vacated office, after pronouncing judgment but without signing the decree, a decree drawn up in accordance with such judgment may be signed by his successor or, if the Court has ceased to exist, by the Judge of any Court to which such Court was subordinate.

Decree for recovery of immoveable property.

9. Where the subject-matter of the suit is immoveable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for delivery of immoveable property.

10. Where the suit is for moveable property, and the decree is for the delivery of such property, the decree shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree may direct payment by instalments.

11. (1) Where and in so far as a decree is for the payment of money, the Court may for any sufficient reason at the time of passing the decree order that payment of the amount decreed shall be postponed or shall be made by instalments, with or without interest, notwithstanding anything contained in the contract under which the money is payable.

(2) After the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, or without such consent for special reasons which are to be recorded, order that payment of the amount decreed shall be postponed or shall be made by instalments on such terms as to the payment of interest, the attachment of the property of the judgment-debtor, or the taking of security from him, or otherwise, as it thinks fit.

Order, after decree, for payment by instalments.

12. (1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree—

Decree for possession and mesne profits.

(a) for the possession of the property;

(b) for the rent or mesne profits which have accrued on the property during a period prior to the institution of the suit or directing an inquiry as to such rent or mesne profits;

(c) directing an inquiry as to rent or mesne profits from the instituion of the suit until—

(i) the delivery of possession to the decree-holder,

(ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court, or

(iii) the expiration of three years from the date of the decree,

whichever event first occurs.

(2) Where an inquiry is directed under clause (b) or clause (c), a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

13. (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court shall, before passing the final decree, pass a preliminary decree ordering such accounts and inquiries to be taken and made, and giving such other directions as it thinks fit.

Decree in administration-suit.

(2) In the administration by the Court of the property of of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration-suit is pending with respect to the estates of persons adjudged or delcared insolvent; and all persons who in any such case would be entitled to be paid out of such pro-

perty, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Decree in right of prior purchase suit.

14. (1) Where the Court decrees a claim to right of prior purchase in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

(2) Where the Court has adjudicated upon rival claims to right of prior purchase, the decree shall direct,—

(a) if and in so far as the claims decreed are equal in degree, that the claim of each pre-emptor complying with the provisions of sub-rule (1) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and,

(b) if and in so far as the claims decreed are different in degree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.

Decree in suit for dissolution of partnership.

15. Where a suit is for the dissolution of a partnership, or the taking of partnership accounts, the Court, before passing a final decree, may pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnership shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.

Decree in suit for account between principal and agent.

16. In a suit for an account of pecuniary transactions between a principal and an agent, and in any other suit not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.

17. The Court may either by the decree directing an

account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched and in particular may direct that in taking the account the books of account in which the accounts in question have been kept shall be taken as *prima facie* evidence of the truth of the matters therein contained with liberty to the parties interested to take such objection thereto as they may be advised.

Special directions as to accounts.

18. Where the Court passes a decree for the partition of property or for the separate possession of a share therein, then,—

Decree in suit for partition of property or separate possession of a share therein.

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immoveable property or to moveable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.

19. (1) Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree shall state what amount is due to the plaintiff and what amount is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Decree when set-off is allowed.

(2) Any decree passed in a suit in which a set-off is claimed shall be subject to the same provisions in respect of appeal to which it would have been subject if no set-off had been claimed.

Appeal from decree relating to set-off.

(3) The provisions of this rule shall apply whether the set-off is admissible under rule 6 of Order VIII or otherwise.

20. Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

Certified copies of judgement and decree to be furnished.

ORDER XXI.

EXECUTION OF DECREES AND ORDERS.

Payment under Decree.

1. (1) All money payable under a decree shall be paid as follows, namely:—

Mode of paying money under decree.

(a) into the Court whose duty it is to execute the decree; or

(b) out of Court to the decree-holder; or

(c) otherwise as the Court which made the decree directs.

(2) Where any payment is made under clause (a) of sub-rule (1), notice of such payment shall be given to the decree-holder.

2. (1) Where any money payable under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

Payment out of Court to decree-holder.

(2) The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

(3) A payment or adjustment, which has not been certified or recorded as aforesaid, shall not be recognised by any Court executing the decree.

Courts executing Decrees.

3. Where immoveable property forms one estate or tenure situate within the local limits of the jurisdiction of two or more Courts, any one of such Courts may attach and sell the entire estate or tenure.

Lands situate in more than one jurisdication.

4. Omitted.

5. Where the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court, But, where the Court to which the decree is to be sent for execution is sitaute in a different dis-

Mode of transfer.

trict, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure where Court desires that its own decree shall be executed by another Court.

6. The Court sending a decree for execution shall send—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unsatisfied; and

(c) a copy of any order for the execution of the decree, or, if no such order has been made, a certificate to that effect.

Court receiving copies, of decree, etc., to file same without proof.

7. The Court to which a decree is so sent shall cause such copies and certificates to be filed, without any further proof of the decree or order for execution, or of the copies thereof, unless the Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

8. Where such copies are so filed, the decree or order may, if the Court to which it is sent is the District Court, be executed by such Court or be transferred for execution to any subordinate Court of competent jurisdiction.

9. Omitted.

Application for execution.

10. Where the holder of a decree desires to execute it, he shall apply to the Court which passed the decree or to the officer (if any) appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court then to such Court or to the proper officer thereof.

Oral application.

11. (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.

Written application.

(2) Save as otherwise provided by sub-rule (1), every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars,

namely:—

(a) the number of the suit;

(b) the names of the parties;

(c) the date of the decree;

(d) whether any appeal has been preferred from the decree;

(e) whether any, and (if any) what payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;

(f) whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;

(g) the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross-decree, whether passed before or after the date of the decree sought to be executed;

(h) the amount of the costs (if any) awarded;

(i) the name of the person against whom execution of the decree is sought; and

(j) the mode in which the assistance of the Court is required whether—

(i) by the delivery of any property specifically decreed;

(ii) by the attachment and sale, or by the sale without attachment, of any property;

(iii) by the arrest and detention in prison of any person;

(iv) by the appointment of a receiver;

(v) otherwise, as the nature of the relief granted may require.

(3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

Application for attachment of moveable property not in judgment-debtor's possession.

12. Where an application is made for the attachment of any moveable property belonging to a judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Application for attachment of immoveable property to contain certain particulars.

13. Where an application is made for the attachment of any immoveable property belonging to a judgment-debtor, it shall contain at the foot—

(a) a description of such property sufficient to identify the same and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, a

specification of such boundaries or numbers; and

(b) a specification of the judgment-debtor's share or interest in such property to the best of the belief of the applicant, and so far as he has been able to ascertain the same.

Power to require certified extract from Collector's register in certain cases.

14. Where an application is made for the attachment of any land which is registered in the office of the Collector, the Court may require the applicant to produce a certified extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for the land, and the shares of the registered proprietors.

Application for execution by joint decree-holder.

15. (1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application for execution by transferee of decree.

16. Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by by such decree-holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others.

Procedure on receiving application for execution of decree.

17. (1) On receiving an application for the execution of a decree as provided by rule 11, sub-rule (2), the Court shall ascertain whether such of the requirements of rules 11 to 14 as

may be applicable to the case have been complied with; and, if they have not been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

(2) Where an application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.

(3) Every amendment made under this rule shall be signed or initialled by the Judge.

(4) When the application is admitted, the Court shall enter in the proper register a note of the application and the date on which it was made, and shall, subject to the provisions hereinafter contained, order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for the payment of money, the value of the property attached shall, as nearly as may be, correspond with the amount due under the decree.

Execution in case of cross-decrees.

18. (1) Where applications are made to a Court for the execution of cross-decrees in separate suits for the payment of two sums of money passed between the same parties and capable of execution at the same time by such Court, then—

(a) if the two sums are equal, satisfaction shall be entered upon both decrees; and

(b) if the two sums are unequal, execution may be taken out only by the holder of the decree for the larger sum and for so much only as remains after deducting the smaller sum, and the satisfaction for the smaller sum shall be entered on the decree for the larger sum as swell as satisfaction on the decree for the smaller sum.

(2) This rule shall be deemed to apply where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

(3) This rule shall not be deemed to apply unless—

(a) the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

(b) the sums due under the decrees are definite.

(4) The holder of a decree passed against several persons jointly and severally may treat it as a cross-decree in relation to a decree passed against him singly in favour of one or more of such persons.

Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future

day. B cannot treat his decree as a cross-decree under this rule,

(*b*) A and B co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtain a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this rule.

(*c*) A obtains decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this rule.

(*d*) A, B, C, D and E are jointly and severally liable for Rs. 1,000 under a decree obtained by F. A obtains a decree for Rs. 100 against F singly and applies for execution to the Court in which the joint-decree is being executed. F may treat his joint-decree as a cross-decree under this rule.

Execution in case of cross-claims under same decree.

19. Where application is made to a Court for the execution of a decree under which two parties are entitled to recover sums of money from each other, then,—

(a) if the two sums are equal, satisfaction for both shall be entered upon the decree; and,

(b) if the two sums are unequal, execution may be taken out only by the party entitled to the large sum and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered upon the decree.

Cross-decrees and cross-claims in mortgage-suits.

20. The provisions contained in rules 18 and 19 shall apply to decrees for sale in enforcement of a mortgage or charge.

Simultaneous execution

21. The Court may, in its discretion, refuse execution at the same time against the person and property of the judgment-debtor.

Notice to show cause against execution in certain cases.

22. (1) Where an application for execution is made—

(a) more than one year after the date of the decree, or

(b) against the legal representative of a party to the decree, or

[1][(c) in respect of a decree passed outside the State and execution whereof is sought within the State,]

the Court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

Provided that no such notice shall be necessary in consequence of more than one year having elapsed between the date of the decree and the application for execution if the application is made within one year from the date of the last order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative

[1] Clause (c) inserted *vide* Act VI of 1995 published in Government Gazette dated 17th Mar 1995.

of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the Court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if, for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

Procedure after issue of notice.

23. (1) Where the person to whom notice is issued under the last preceding rule does not appear or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

(2) Where such person offers any objection to the execution of the decree, the Court shall consider such objection and make such order as it thinks fit.

Proces for execution.

24. (1) When the preliminary measures (if any) required by the foregoing rules have been taken, the Court shall, unless it sees cause to the contrary, issue its process for the execution of the decree.

(2) Every such process shall bear date the day on which it is issued, and shall be signed by the Judge or such officer as the Court may appoint in this behalf, and shall be sealed with the seal of the Court and delivered to the proper officer to be executed.

(3) In every such process a day shall be specified on or before which it shall be executed.

Endorsement on process.

25. (1) The officer entrusted with the execution of the process shall endorse thereon, the day on, and the manner in which it was executed, and, if the latest day specified in the process for the return thereof has been exceeded, the reasons of the delay, or, if it was not executed, the reason why it was not executed, and shall return the process with such endorsement to the Court.

(2) Where the endorsement is to the effect that such officer is unable to execute the process, the Court shall examine him touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

Stay of Execution.

When Court may stay execution.

26. (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the

judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Before making an order to stay execution or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Power to require security from, or impose conditions upon, judgment-debtor.

27. No order of restitution or discharge under rule 26 shall prevent the property or person of a a judgment-debtor from being retaken in execution of the decree sent for execution.

Liability of judgment-debtor discharged.

28. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

29. Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Stay of execution pending suit between decree-holder and judgment-debtor.

Mode of execution.

30. Every decree for the payment of money, including a decree for the payment of money as the alternative to some other relief, may be executed by the detention in the civil prison of the judgment-debtor, or by the attachment and sale of his property, or by both.

Decree for payment of money.

31. (1) Where the decree is for any specific moveable or for any share in a specific moveable, it may be executed by the seizure, if

Decree for specific moveable property.

practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by detention in the civil prison of the judgment-debtor, or by the attachment of his property, or by both.

(2) Where any attachment under sub-rule (1) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed by the decree to be paid as an alternative to delivery of moveable property, such amount, and, in other cases, such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-holder on his application.

(3) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made has been refused, the attachment shall cease.

Decree for specific performance, for restitution of conjugal rights, or for an injunction.

32. (1) Where the pary against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injuction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced [1][in case of a decree for restitution of conjugal rights, by the attachment of the property or in the case of a decree for the specific performance of contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injuntion has been passed is a corporation, the decree may be enforced by the attachment of theproperty of the corporation or, with the leave of the Court, by the detention in the civil p.ison of the directors or other principal officers thereof or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for one year if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold ; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall

[1]Inserted *vide* Act VI of 1995 published in Government Gazette dated 17th Mar 1995.

pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of one year from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may in lieu of or in addition to all or any of the processes aforesaid direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree.

Illustration.

A, a person of little substance, erects a building which renders unhabitable a family mansion belonging to B. A, in spite of his detention in prison and the attachment of his property, declines to obey a decree obtained against him by B and directing him to remove the building. The Court is of opinion that no sum realizable by the sale of A's property would adequately compensate B for the depreciation in the value of his mansion. B may apply to the Court to remove the building and may recover the cost of such removal from A in the execution-proceedings.

Discretion of Court executing decrees for restitution of conjugal rights.

33. (1) [1][Notwithstanding anything contained in Rule 32] where [1][the decree is for restitution of conjugal rights] and the decree-holder is the wife, [1][Court] may order that; in the event of the decree not being obeyed within such period as may be fixed in this behalf, the judgment-debtor shall make to the decree-holder such periodical payments as may be just, and, if it thinks fit, require that the judgment-debtor shall, to its satisfaction, secure to the decree-holder such periodical payments.

(2) The Court may, from time to time, vary or modify any order made under sub-rule (1) for the periodical payment or by increasing or diminishing the amount, or may temporarily suspend the same as to the whole or any part of the money so ordered to be paid, and again revive the same, either wholly or in part as it may think just,

(3) Any money ordered to be paid under this rule may be recovered as though it were payable under a decree for the

[1]Amendments in Rule 33 made *vide* Act VI of 1995 published in Government Gazette dated 17th Har 1995.

payment of money.

Decree for execution of document, or endorsement of negotiable instrument.

34. (1) Where a decree is for the execution of a document or for the endorsement of a negotiable instrument and the judgment-debtor neglects or refuses to obey the decree, the decree-holder may prepare a draft of the document or endorsement in accordance with the terms of the decree and deliver the same to the Court.

(2) The Court shall thereupon cause the draft to be served on the judgment-debtor together with a notice requiring his objections (if any) to be made within such time as the Court fixes in this behalf.

(3) Where the judgment-debtor objects to the draft, his objections shall be stated in writing within such time, and the Court shall make such order approving or altering the draft, as it thinks fit.

(4) The decree-holder shall deliver to the Court a copy of the draft with such alterations (if any) as the Court may have directed upon the proper stamp-paper if a stamp is required by the law for the time being in force; and the Judge or such officer as may be appointed in this behalf shall execute the document so delivered.

(5) The execution of a document or the endorsement of a negotiable instrument under this rule may be in the following form, namely:—

"C. D., Judge of the Court of
(*or as the case may be*), for A. B., in a suit by E. F. against A. B.",

and shall have the same effect as the execution of the document or the endorsement of the negotiable instrument by the the party ordered to execute or endorse the same.

(6) The Court, or such officer as it may appoint in this behalf, shall cause the document to be registered if its registration is required by the law for the time being in force or the decree-holder desires to have it registered, and may make such order as it thinks fit as to the payment of the expenses of the registration.

Decree for immoveable property.

35. (1) Where a decree is for the delivery of any immoveable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immoveable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the pro-

perty and proclaiming by beat of drum, or other customary mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the Court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree-holder in possession.

Decree for delivery of immovable property when in occupancy of tenant.

36. Where a decree is for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, the substance of the decree in regard to the property.

Discretionary power to permit judgment-debtor to show cause against detention in prison.

37. (1) Notwithstanding anything in these rules, where an application is for the execution of a decree for the payment of money by the arrest and detention in the civil prison of a judgment-debtor who is liable to be arrested in pursuance of the application, the Court [1][shall] instead of issuing a warrant for his arrest, issue a notice calling upon him to appear before the Court on a day to be specified in the notice and show cause why he should not be committed to the civil prison;

[1][Provided that such notice shall not be necessary, if the Court is satisfied by affidavit, or otherwise, that with the object or effect of delaying the execution of the decree, the judgment-debtor is likely to abscond or leave the local limits or jurisdiction of the Court.]

(2) Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor.

Warrant for arrest to direct judgment-debtor to be brought up.

38. Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered so pay, together with the interest thereon and the cost (if any) to which he is liable, be sooner paid.

[1]In rule 37 "shall" substituted for "may" and proviso added *vide* Act VI of 1995 published in to Government Gazette dated 17th Mar 1995.

39. (1) No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

Subsistance allowance.

(2) Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the scales fixed under section 57 or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

(3) The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to the civil prison, and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in the civil prison shall be deemed to be costs in the suit:

Provided that the judgment-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

[1][**40.** (1) When a judgment-debtor appears before the Court in obedience to a notice issued under rule 37 or is brought before the Court after being arrested in execution of a decree for the payment of money, the Court shall proceed to hear the decree-holder and take all such evidence as may be produced by him in support of his application for execution and shall then give the judgment-debtor an opportunity of showing cause why he should not be committed to the civil prison.

Proceedings on appearance of judgment-debtor in obedience to notice or after arrest.

(2) Pending the conclusion of the inquiry under sub-rule (1) the Court may in its discretion, order the judgment-debtor to be detained in the custody of an officer of the court or release him on his furnishing security to the satisfaction of the Court for his appearance when required.

(3) Upon the conclusion of the inquiry under sub-rule (1) the Court may subject to the provisions of section 51 and to the other provisions of this Code make an order for the detention of the judgment-debtor in the civil prisons and shall

[1]Rule 40 substituted *vide* Act VI of 1995 published in Government Gazette dated 17th Mar 1995.

in that event cause him to be arrested if he is not already under arrest :

Provided that in order to give the judgment-debtor an opportunity of satisfying the decree the Court may before making the order of detention leave the judgment-debtor in the custody of an officer of the Court for a specified period not exceeding 15 days or release him on his furnishing security to the satisfaction of the Court for his appearance at the expiration of the specified period if the decree be not sooner satisfied.

(4) A judgment-debtor released under this rule may be re-arrested.

(5) When the Court does not make an order of detention under sub-rule (3) it shall disallow the application and if the judgment-debtor is under arrest direct his release.]

Attachment of property.

Examination of judgment debtor as to his property.

41. Where a decree is for the payment of money the decree-holder may apply to the Court for an order that—

(a) the judgment-debtor, or

(b) in the case of a corporation, any officer thereof, or

(c) any other person,

be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the the decree; and the Court may make an order for the attendance and examination of such judgment-debtor, or officer or other person, and for the production of any books or documents.

Attachment in case of decree for rent or mesne profits or other matter, amount of which to be subsequently determined.

42. Where a decree directs an inquiry as to rent or mesne profits or any other matter, the property of the judgment-debtor may, before the amount due from him has been ascertained, be attached, as in the case of an ordinary decree for the payment of money.

Attachment of moveable property other than agricultural produce, in possession of judgment-debtor.

43. Where the property to be attached is moveable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to

speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

Attachment of agricultural produce.

44. Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment,—

(a) where such produce is a growing crop, on the land on which such crop has grown, or

(b) where such produce has been cut or gathered on the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the judgment-debtor ordinarily resides or, with the leave of the Court, on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Court.

Provisions as to agricultural produce under attachment.

45. (1) Where agricultural produce is attached, the Court shall make such arrangements for the custody thereof as it may deem sufficient and for the purpose of enabling the Court to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered.

(2) Subject to such conditions as may be imposed by the Court in this behalf either in the order of attachment or in any subsequent order, the judgment-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it; and if the judgment-debtor fails to do all or any of such acts, the decree-holder may, with the permission of the Court and subject to the like conditions, do all or any of them either by himself, or by any person appointed by by him in this behalf, and the costs incurred by the decree-holder shall be recoverable from the judgment-debtor as if they were included in, or formed part of, the decree.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Court may suspend the execution of the order for such time as it thinks fit, and may, in its discretion, make a further order prohibiting the removal of

the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

Attachment of debt, share and other propery not in possession of judgement-debtor.

46. (1) In the case of—

(a) a debt not secured by a negotiable instrument,

(b) a share in the capital of a corporation,

(c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court,

the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(ii) in the case of the share, the person in whose name the share may be standing from transferring the the same or receiving any dividend thereon;

(iii) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the court-house, and another copy shall be sent in the case of the debt, to the debtor, in the case of the share, to the proper officer of the corporation, and, in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

Attachment of share in moveables.

47. Where the property to be attached consists of the share or interest of the judgment-debtor in moveable property belonging to him and another as co-owners, the attachment shall be made by a notice to the judgment-debtor prohibiting him from transferring the share or interest or charging it in any way.

Attachment of salary or allowances of public officer or servant of local authority.

48. (1) Where the property to be attached is the salary or allowances of a public officer or of a local authority, the Court, whether the judgment-debtor or the disbursing officer is or is not within the local limits of the Court's juris-

diction, may order that the amount shall, subject to the provisions of section 60 be withheld from such salary or allowances either in one payment or by monthly instalments as the Court may direct; and, upon notice of the order to such officer as the Government may, by notification in the Government Gazette, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Court the amount due under the order, or the monthly instalments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the Government in this behalf shall forthwith return the subsequent order to the Court issuing it with a full statement of all the particulars of the existing attachment.

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind the Government or the local authority, as the case may be, while the judgment-debtor is within the State and while he is outside the State if he is in receipt of any salary or allowances payable out of His Highness' revenues or the funds of a local authority in the State; and the Government or local authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

Attachment of partnership property.

49. (1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the parntership property and profits with payment of the amount due under the decree, and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require.

(3) The other partner or partners shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.

(4) Every application for an order under snb-rule (2)

shall be served on the judgment-debtor and on his partners or such of them as are within the State.

(5) Every application made by any partner of the judgment-debtor under sub-rule (3) shall be served on the decree-holder and on the judgment-debtor, and on such of the other partners as do not join in the application and as are within the State.

(6) Service under sub-rule (4) or sub-rule (5) shall be deemed to be service on all the partners, and all orders made on such applications shall be similarly served.

Execution of decree against firm.

50. (1) Where a decree has been passed against a firm, execution may be granted—

(a) against any property of the partnership;

(b) against any person who has appeared in his own name under rule 6 or rule 7 of Order XXX or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(c) against any person who has been individually served as a partner with a summons and has failed to appear:

Provided that nothing in this sub-rule shall be deemed to limit or otherwise affect the provisions of [1]section 247 of the Contract Act.

(2) Where the decree-holder claims to be entitled to cause the decree to be executed against any person other than such a person as is referred to in sub-rule (1), clauses (b) and (c), as being a partner in the firm, he may apply to the Court which passed the decree for leave, and where the liability is not disputed, such Court may grant such leave, or, where such liability is disputed, may order that the liability of such person be tried and determined in any manner in which any issue in a suit may be tried and determined.

(3) Where the liability of any person has been tried and determined under sub-rule (2), the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(4) Save as against any property of the partnership, a decree against a firm shall not release, render liable or otherwise affect any partner therein unless he has been served with a summons to appear and answer.

Attachment of negotiable instruments.

51. Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

52. Where the property to be attached is in the custody

[1] See Partnership Act.

Attachment of property in custody of Court or public officer.

of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice is issued:

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

Attachment of decrees

53. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made,—

(a) if the decrees were passed by the same Court, then by order of such Court, and,

(b) if the decree sought to be attached was passed by another Court, then by the issue to such other Court of a notice by the Court which passed the decree sought to be executed, requesting such other Court to stay the execution of its decree unless and until—

(i) the Court which passed the decree sought to be executed cancels the notice, or

(ii) the holder of the decree sought to be executed or his judgment-debtor applies to the Court receiving such notice to execute its own decree.

(2) Where a Court makes an order under clause (a) of sub-rule (1), or receives an application under sub-head (ii) of clause (b) of the said sub-rule, it shall, on the application of the creditor who has attached the decree or his judgment-debtor, proceed to execute the attached decree and apply the net proceeds in satisfaction of the decree sought to be executed.

(3) The holder of a decree sought to be executed by the attachment of another decree of the nature specified in sub-rule (1) shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

(4) Where the property to be attached in the execution of a decree is a decree other than a decree of the nature referred to in sub-rule (1), the attachment shall be made, by a notice by the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, where such decree has been passed by any other Court, also by sending to such other Court, a notice to abstain from execu-

ting the decree sought to be attached until such notice is cancelled by the Court from which it was sent.

(5) The holder of a decree attached under this rule shall give the Court executing the decree such information and aid as may reasonably be required.

(6) On the application of the holder of a decree sought to be executed by the attachment of another decree, the Court making an order of attachment under this rule shall give notice of such order to the judgment-debtor bound by the decree attached; and no payment or adjustment of the attached decree made by the judgment-debtor in contravention of such order after receipt of notice thereof, either through the Court or otherwise, shall be recognized by any Court so long as the attachment remains in force.

Attachment of immoveable property.

54. (1) Where the property is immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the court-house, and also, where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situate.

Removal of attachment after satisfaction of decree.

55. Where—

(a) the amount decreed with costs and all charges and expenses resulting from the attachment of any property are paid into Court, or

(b) satisfaction of the decree is otherwise made through the Court or certified to the Court, or

(c) the decree is set aside or reversed,

the attachment shall be deemed to be withdrawn, and, in the case of immoveable property, the withdrawal shall, if the judgment-debtor so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner prescribed by the last preceding rule.

Order for payment of coin or currency notes to party entitled under decree.

56. Where the property attached is current coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

57. Where any property has been attached in execution of a decree but by reason of the decree-holder's default the Court is unable to proceed further with the application for execution, it shall either dismiss the application or for any sufficient reason adjourn the proceedings to a future date. Upon the dismissal of such application the attachment shall cease.

Determination of attachment

Investigation of claims and objections.

58. (1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, asif he was a party to the suit:

Investigation of claims to, and objections to attachment of, attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

Postponement of sale.

59. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

60. Where upon the said investigation the Court is satisfied that for the reason stated in the claim or objection such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall make an order releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

61. Where the Court is satisfied that the property was, at the time it was attached, in the possession of judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust

Disallowance of claim to property attached.

for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Continuance of attachment subject to claim of incumbrancer.

62. Where the Court is satisfied that the property is subject to a mortgage or charge in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or charge.

Saving of suits to establish right to attached property.

63. Where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Sale generally.

Power to order property attached to be sold and proceeds to be paid to person entitled.

64. Any Court executing a decree may order that any property attached by it and liable to sale, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Sales by whom conducted and how made.

65. Save as otherwise prescribed, every sale in execution of a decree shall be conducted by an officer of the Court or by such other person as the Court may appoint in this behalf, and shall be made by public auction in manner prescribed.

Proclamation of sales by public auction.

66. (1) Where any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court.

(2) Such proclamation shall be drawn up after notice to the decree-holder and the judgment-debtor and shall state the time and place of sale, and specify as fairly and accurately as possible—

(a) the property to be sold;

(b) the revenue assessed upon the estate or part of the estate, where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government;

(c) any incumbrance to which the property is liable;

(d) the amount for the recovery of which the sale is ordered; and

(e) every other thing which the Court considers material for a purchaser to know in order to judge of the nature and value of the property.

(3) Every application for an order for sale under this rule shall be accompanied by a statement signed and verified in the manner hereinbefore prescribed for the signing and verification of pleadings and containing, so far as they are known to or can be ascertained by the person making the verification, the matters required by sub-rule (2) to be specified in the proclamation.

(4) For the purpose of ascertaining the matters to be specified in the proclamation, the Court may summon any person whom it thinks necessary to summon and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

Mode of making proclamation.

67. (1) Every proclamation shall be made and published, as nearly as may be, in the manner prescribed by rule 54, sub-rule (2).

(2) Where the Court so directs, such proclamation shall also be published in the Government Gazette or in a local newspaper, or in both, and the costs of such publication shall be deemed to be costs of the sale.

(3) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Court, otherwise be given.

Time of sale.

68. Save in the case of property of the kind described in the proviso to rule 43, no sale hereunder shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been affixed on the court-house of the Judge ordering the sale.

Adjournment or stoppage of sale.

69. (1) The Court may, in its discretion, adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under rule 67 shall be made, unless the judgment-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has

been paid into the Court which ordered the sale.

Saving of certain sales.

70. Nothing in rules 66 to 69 shall be deemed to apply to any case in which the execution of a decree has been transferred to the Collector.

Defaulting purchaser answerable for loss on re-sale.

71. Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court or to the Collector or subordinate of the Collector, as the case may be, by the officer or other person holding the sale, and shall, at the instance of either the decree-holder or the judgment-debtor, be recoverable from the defaulting purchaser under the provisions relating to the execution of a decree for the payment of money.

Decree-holder not to bid for or buy property without permission.

72. (1) No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

Where decree-holder purchases, amount of decree may be taken as payment.

(2) Where a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, subject to the provisions of section 73, be set off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

(3) Where a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and all expenses attending it, shall be paid by the decree-holder.

Restriction on bidding or purchase by officers.

73. No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

Sale of moveable property.

Sale of agricultural produce.

74. (1) Where the property to be sold is agricultural produce, the sale shall be held,—

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or,

(b) if such produce has been cut or gathered, at or near the threshing-floor or place for treading out grain or the like or fodder-stack on or in which it is deposited:

Provided that the Court may direct the sale to be held at the nearest place of public resort, if it is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce or a person authorised to act in his behalf applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market-day,

the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

Special provisions relating to growing crops.

75. (1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of its being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering it.

Negotiable instruments and shares in corporations.

76. Where the property to be sold is a negotiable instrument or a share in a corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker.

Sale by public auction.

77. (1) Where moveable property is sold by public auction the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the moveable property to be sold is a share in goods belonging to the judgment-debtor and a co-owner and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deeemd to be the bidding of the co-owner.

78. No irregularity in publishing or conducting the sale

Irregularity not to vitiate sale, but any person injured may sue.

of moveable property shall vitiate the the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

79. (1) Where the property sold is moveable property of which actual seizure has been made, it shall be delivered to the purchaser.

Delivery of moveable property, debts and shares.

(2) Where the propery sold is moveable propery in the possession of some person other than the judgment-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument, or is a share in a corporation, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the the manager, secretary or other proper officer of the corporation from permitting any such transfer or making an such payment to any person except the purchaser.

80. (1) Where the execution of a document or the endorsement of the party in whose name a negotiable instrument or a share in a corporation is standing is required to transfer such negotiable instrument or share, the Judge or such officer as he may appoint in this behalf may execute such document or make such endorsement as may be necessary, and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

Transfer of negotiable instruments and shares.

(2) Such execution or endorsement may be in the following form, namely:—

A. B. by C. D., Judge of the Court of (*or as the case may be*), in a suit by E.F. against A. B.

(3) Until the transfer of such negotiable instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon and to sign a receipt for the same; and any receipt so signed shall be as valid and

effectual for all pruposes as if the same had been signed by the party himself.

Vesting order in case of other property.

81. In the case of any moveable property not hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of immoveable property.

What Courts may order sales.

82. Sales of immoveable property in execution of decrees may be ordered by any Court other than a Court of Small Causes.

Postponement of sale to enable judgment-debtor to raise amount of decree

83. (1) Where an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may, on his application, postpone the sale of the property comprised in the order for sale on such terms and for such period as it thinks proper, to enable him to raise the amount.

(2) In such case the Court shall grant a certificate to the judgment-debtor authorising him within a period to be mentioned therein, and notwithstanding anything, contained in section 64, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the judgment-debtor, but, save in so far as a decree-holder is entitled to set off such money under the provisions of rule 72, into Court:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Court.

(3) Nothing in this rule shall be deemed to apply to a sale of property directed to be sold in execution of a decree for sale in enforcement of a mortgage of, or charge on, such property.

Deposit by purchaser and re-sale on default.

84. (1) On every sale of immoveable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per cent. on the amount of his purchase-money to the officer or other person conducting the sale, and in default of such deposit, the property shall forthwith be re-sold.

(2) Where the decree-holder is the purchaser and is entitled to set off the puchase money under rule 72, the Court may dispense with the requirements of this rule.

85. The full amount of purchase-money payable shall be paid by the purchaser into Court before the Court closes on the fifteenth day from the sale of the property:

Time for payment in full of purchase-money.

Provided that, in calculating the amount to be so paid into Court, the purchaser shall have the advantage of any set-off to which he may be entitled under rule 72.

86. In default of payment within the period mentioned in the last preceding rule, the deposit may, if the Court thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

87. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale.

88. Where the property sold is a share of undivided immoveable property and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

Bid of co-sharer to have preference.

89. (1) Where immoveable property has been sold in execution of a decree, any person, either owning such property at the date of the sale or holding an interest therein by virtue of a title acquired before such sale, may apply to have the sale set aside on his depositing in Court,

Application to set aside sale on deposit.

(a) for payment to the purchaser, a sum equal to five per cent. of the purchase-money, and

(b) for payment to the decree-holder, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation of sale have been received by the decree-holder.

(2) Where a person applies under rule 90 to set aside the sale of his immoveable property, he shall not, unless he withdraws his application, be entitled to make or prosecute an application under this rule.

(3) Nothing in this rule shall relieve the judgment-debtor from any liability he may be under in respect of costs and interest not covered by the proclamation of sale.

90. (1) Where any immoveable propery has been sold

in execution of a decree, the decree-holder, or any person entitled to share in a rateable distribution of assets, or whose interests are affected by the sale, may apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting it:

Application to set aside sale on ground of irregularity or fraud.

Provided that no sale shall be set aside on the ground of irregularity or fraud unless upon the facts proved the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud.

91. The purchaser at any such sale in execution of a decree may apply to the Court to set aside the sale, on the ground that the judgment-debtor had no saleable interest in the property sold.

Application by purchaser to set aside sale on ground of judgment-debtor having no saleable interest

92. (1) Where no application is made under rule 89, rule 90 or rule 91, or where such application is made and disallowed, the Court shall make an order confirming the sale, and thereupon the sale shall subject to the provisions of rule 94 become absolute.

Sale when to become absolute or be set aside.

(2) Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within thirty days from the date of sale, the Court shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons effected thereby.

(3) No suit to set side an order made under this rule shall be brought by any person against whom such order is made.

93. Where a sale of immoveable property is set aside under rule 92, the purchaser shall be entitled to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.

Return of purchase-money in certain cases.

94. Where a sale of immoveable property is confirmed the Court shall prepare a certificate specifying the property sold, the name of the person who at the time of sale is declared to be the purchaser and the date on which the sale was confirmed and send it for registration to the registering officer within the local limits of whose jurisdiction the whole or any part of the immoveable property comprised in such certificate is situate. On completion of its registration according to the provisions of the Registration Act the registering officer shall return the certificate to the Court from whom it was received. The Court

Certificate to purchaser.

shall then issue the certificate to the purchaser.

Delivery of property in occupancy of judgement-debtor.

95. Where the immoveable property sold is in the occupancy of the judgment-debtor or of some person on his behalf or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by putting such purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of property in occupancy of tenant

96. Where the property sold is in the occupancy of a tenant or other person entitled to occupy the the same and a certificate in respect thereof has been granted under rule 94, the Court shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Resistance to delivery of possession to decree-holder or purchaser.

Resistance or obstruction to possession of immoveable property.

97. (1) Where the holder of a decree for the possession of immoveable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

Resistance or obstruction by judgment-debtor.

98. Where the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor or any person acting at his instigation, to be detained in the civil prison for a term which may extend to thirty days.

99. Where the Court is satisfied that the resistance or obstruction was occasioned by any person (other than the judgment-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgement-debtor, the Court shall make an order dismissing the application.

Resistance or obstruction by *bona fide* claimant.

100. (1) Where any person other than the judgment-debtor is dispossessed of immoveable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

Dispossession by decree-holder or purchaser.

(2) The Court shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

101. Where the Court is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the judgment-debtor, it shall direct that the applicant be put into possession of the property.

***Bona fide* claimant to be restored to possession.**

102. Nothing in rules 99 and 101 shall apply to resistance or obstruction in execution of a decree for the possession of immoveable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

Rules not applicable to transferee *lite pendente*.

103. Any party not being a judgment-debtor against whom an order is made under rule 98, rule 99 or rule 101 may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit (if any), the order shall be conclusive.

Orders conclusive subject to regular suit.

ORDER XXI (A).

OF INSOLVENT JUDGMENT-DEBTORS.

1. Any judgment-debtor arrested or imprisoned in execution of a decree for money or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Power to apply for declaration of insolvency.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of application.

2. The application, when made by the judgment-debtor, shall set forth—

(a) the fact of his arrest and imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned. the place in which he is in custody;

(b) the amount, kind, and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to put it at the disposal of the Court;

(e) the amount and particulars of all pecuniary claims against him; and

(f) the names and residences of his creditors, so far as they are known to, or can be ascertained by, him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

Subscription and verification of application.

3. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying pleadings.

Service of copy of application and notice.

4. The Court shall fix a day for hearing the application, and shall cause a copy therof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court, and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder and on the other creditors (if any) mentioned in the application;

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish, at the applicant's expense, the application in the Government Gazette and such public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section, if satisfied that he is unable to make them.

5. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant, and applying for leave to be heard on the application.

Power to serve other creditors.

[1]**6.** If at the time of making an order admitting the petition or at any subseqeunt time before adjudication, the judgment debtor is in custody under the foregoing provisions of this Code, the court may order his release on such term as to security as may be reasonable and necessary.

Powers of Court as to judgement-debtor under arrest

7. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge, and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Procedure at hearing.

8. If the Court is satisfied—

Declaration of insolvency and appointment of Receiver.

(a) that the statements in the application are substantially true;

(b) that the judgment-debtor has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts, or given an unfair preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a Receiver of his property, or, if it does not appoint such Receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

[1]Rule 6 substituted *vide* Act IV of 1988 published in Government Gazette dated 18th Mar 1988.

9. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insovlent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall, by order, determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such persons and debts, and the declaration under rule 8 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

Creditors to prove their debts.

Schedule to be framed.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent firm, or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

10. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insovlent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Applications by unscheduled creditors.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule, so far as regards the amount, nature, or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule, so far as regards the amount, nature, or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections (if any), may comply with or reject the application.

11. Every order under rule 8 shall be published in the Government Gazette, and [every order under that section appointing a Receiver] shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 60), whether set forth in his application or not.

Effect of order appointing Receiver.

12. The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid;

Receiver to give security and collect assets.

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Discharge of insolvent.

13. The Receiver shall proceed under the direction of the Court—

Duty of Receiver.

(a) to convert the property into money;

(b) to pay thereout debts, fines, and penalties (if any) due by the insolvent to the State;

(c) to pay the said decree-holder's costs;

(d) to discharge, according to their respective priorities, all debts secured by mortgage of the insolvent's property;

(e) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any preference:

and such Receiver may retain, as a remuneration for the performance of his duties, a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus (if any) to the insolvent or his legal representative.

His right to remuneration

Provided that, in any local area in which a declaration has been made under section 68 and is in force, no sale of immoveable property paying revenue to the State, or held or let for agricultural purposes, shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (a) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (b) the immoveable property of the insolvent remaining unsold, and (c) the incumbrances (if any) existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the powers conferred on him by Schedule III as he thinks fit, and subject to the provisions of the said Schedule, so far as it may be applicable, and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

Delivery of surplus.

[1]**14.** (a) An insolvent discharged under rule 8 or 12 may apply to the Court for protection, and the Court may on such application make an order for the protection of the insolvent from arrest or detention.

Effect of discharge.

[1]Rule 14 substituted *vide* Act IV of 1988 published in Government Gazette dated 18th Mar 1988.

(b) A protection order may apply either to all the debts of the debtor or to any one of them as the Court may think proper, and may commence and take effect at and for such time as the Court may direct, and may be revoked or renewed as the Court may think fit.

(c) A protection order shall protect the insolvent from being arrested or detained in prison for any debt to which such order applied, and any insolvent arrested or detained contrary to the terms of such an order shall be entitled to his release. Provided that no such order shall operate to prejudice the rights of any creditor in the event of such order being revoked or the adjudication annulled.

(d) Any creditor shall be entitled to appear and oppose the grant of a protection order.

(e) But the property of discharged insolvent (subject to the provisions of rule 15) whether previously or subsequently acquired (except the particulars specified in the first proviso to section 60, and except the property vested in the Receiver) shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one third, or until the expiry of twelve years from the date of the order of discharge under rule 8 or 12.

Declartion that insolvent is discharged from such liability

15. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent, discharged as aforesaid, absolved from further liability in respect of such debts.

Procedure in case of dishonest applicant.

16. Whenever, at the hearing under rule 7, it is proved that the applicant has—

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred, or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application;

the Court shall, at the instance of any of his creditors, sentence him, by order in writing, to imprisonment for a term which may extend to one year from the date of committal;

or the Court may, if it thinks fit, send him to the Magistrate to be dealt with according to law.

17. [1][The Government] may, by notification in the Government Gazette, invest any Court other than a District Court with the powers conferred on District Courts by the preceding rules and the District Judge may transfer to any Court situate in his District, and so invested, any case instituted under rule 1.

Investment of other Courts with powers of District Courts.

A Court so invested may entertain an application under rule 1 by any person who has been arrested or imprisoned, or against whose property an order of attachement has been made in execution of a decree for money passed by that Court.

ORDER XXII.

DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

1. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

No abatement by party's death, if right to sue survives.

2. Where there are more plaintiffs or defendants than one, and any of them dies, and where the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs or against the surviving defendant or defendants.

Procedure where one of several plaintiffs or defendants dies and right to sue survives.

3. (1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to sue survives, the Court on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

Precedure in case of death of one of several plaintiffs or of sole plaintiff.

(2) Where within the time limited by law no application is made under sub-rule (1) the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defandant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue suvives,

Procedure in case of death of one of several defendants or of sole defendant.

[1]Substituted for "His Highness" by Act X of 1997, published in Government Gazette dated 4th, Sawan 1997

the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

Determination of question as to legal representative.

5. Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court.

No abatement by reason of death after hearing.

6. Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.

Suit not abated by marriage of female party.

7. (1) The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may be executed against her alone.

(2) Where the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may, with such permission, be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

When plaintiff's insolvency bars suit.

8. (1) The insolvency of a plaintiff in any suit which the assignee or receiver might maintain for the benefit of of his creditors, shall not cause the suit to abate, unless such assignee or receiver declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct.

Procedure where assignee fails to continue suit or give security

(2) Where the assignee or receiver neglects or refuses to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency

and the Court may make an order dismissing the suit and awarding to the defendant the costs which he has incurred in defending the same to be proved as a debt against the plaintiff's estate.

Effect of abatement or dismissal.

9. (1) Where a suit abates or is dismissed under this Order, no fresh suit shall be brought on the same cause of action.

(2) The plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal; and if it is proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

(3) The provisions of section 5 of the Limitation Act shall apply to applications under sub-rule (2).

Procedure in case of assignment before final order in suit.

10. (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1).

Application of Order to appeal.

11. In the application of this Order to appeals, so far as may be, the word "plaintiff" shall be held to include an appellant, the word "defendant" a respondent, and the word "suit" an appeal.

Application of Order to proceedings.

12. Nothing in rules 3, 4 and 8 shall apply to proceedings in execution of decree or order.

ORDER XXIII.

WITHDRAWAL AND ADJUSTMENT OF SUITS.

Withdrawal of suit or abandonment of part of claim.

1. (1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of

a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule (2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(4) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law not affected by first suit.

2. In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

Compromise of suit.

3. Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit.

Proceedings in execution of decrees not affected.

4. Nothing in this Order shall apply to any proceedings in execution of a decree or order.

ORDER XXIV.

PAYMENT INTO COURT.

Deposit by defendant of amount in satisfaction of claim

1. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit.

2. Notice of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the the Court otherwise directs) be paid to the plaintiff on his application.

Interest on deposit not allowed to plaintiff after notice.

3. No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited is in full of the claim or falls short thereof.

Procedure where plaintiff accepts deposit as satisfaction in part.

4. (1) Where the plaintiff accepts such amount as satisfaction in part only of his claim, he may prosecute his suit for the balance; and, if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff shall pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so for as they were caused by excess in the plaintiff's claim.

Procedure where he accepts it as satisfaction in full.

(2) Where the plaintiff accepts such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pronounce judgment accordingly; and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Illustrations.

(*a*) A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) B sues A under the circumstances mentioned in illustration (*a*). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(*c*) A owes B Rs. 10 , and is willing to pay him that some without suit. B claims Rs. 150 and sues A for that amount. On plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

ORDER XXV.

SECURITY FOR COSTS.

When security for costs may be required from plaintiff.

1. (1) Where, at any stage of a suit, it appears to the Court that a sole plaintiff is , or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of the State, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within the State other than the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time fixed by it, to give security for the

payment of all costs incurred and likely to be incurred by any defendant.

(2) Whoever leaves the State under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of the State within the meaning of sub-rule (1).

Residence out of British India.

(3) On the application of any defendant in a suit for the payment of money, in which the plaintiff is a woman, the Court may at any stage of the suit make a like order if it is satisfied that such plaintiff does not possess any sufficient immoveable property within the State.

2. (1) In the event of such security not being furnished within the time fixed, the Court shall make an order dismissing the suit unless the plaintiff or plaintiffs are permitted to withdraw therefrom.

Effect of failure to furnish security.

(2) Where a suit is dismissed under this rule, the plaintiff may apply for an order to set the dismissal aside, and, if it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from furnishing the security within the time allowed, the Court shall set aside the dismissal upon such terms as to security, costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

(3) The dismissal shall not be set aside unless notice of such application has been served on the defendant.

ORDER XXVI.

COMMISSIONS.

Commissions to examine witnesses.

1. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it.

Cases in which Court may issue commission to examine witness.

2. An order for the issue of a commission for the examination of a witness may be made by the Court either of its own motion or on the the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be exa-

Order for commission.

mined.

Where witness resides within Court's jurisdiction.

3. A commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court thinks fit to execute it.

Persons for whose examination commission may issue.

4. (1) Any Court may in any suit issue a commission for the examination of—

(a) any person resident beyond the local limits of its jurisdiction;

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service.

(2) Such commission may be issued to any Court, within the local limits of whose jurisdiction such person resides, or to any pleader or other person whom the Court issuing the commission may appoint.

(3) The Court on issuing any commission under this rule shall direct whether the commission shall be returned to itself or to any subordinate Court.

Commission or Request to examine witness not within the State.

5. Where any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within the State is satisfied that the evidence of such person is necessary, the Court may issue such commission or a letter of request.

Court to examine witness pursuant to commission.

6. Every Court receiving a commission for the examination of any person shall examine him or cause him to be examined pursuant thereto.

Return of commission with depositions of witnesses.

7. Where a commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto and the evidence taken under it shall (subject to the provisions of the next following rule) form part of the record of the suit.

When depositions may be read in evidence.

8. Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless—

(a) the person who gave the evidence is beyond the

jurisdiction of the Court, or dead or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or is a civil or military officer of the Government who cannot, in the opinion of the Court, attend without detriment to the public service, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in clause (a), and authorises the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Commissions for Local investigations.

Commissions to make local investigations.

9. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-vlaue of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where His Highness has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

Procedure of Commissioner.

10. (1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him to the Court.

Report and depositions to be evidence in suit.

(2) The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court,

Commissioner may be examined in person.

any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or men- tioned in his report, or as to his report, or as to the manner in which he has made the investigation.

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

Commissions to examine accounts.

11. In any suit in which an examination or adjustment

of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

12. (1) The Court shall furnish the Commissioner with such part of the proceedings and such instructions as appear necessary, and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the inquiry, or also to report his own opinion on the point referred for his examination.

Court to give Commissioner necessary instructions.

(2) The proceedings and report (if any) of the Commissioner shall be evidence in the suit, but where the Court has reason to be dissatisfied with them, it may direct such further inquiry as it shall think fit.

Proceedings and report to be evidence. Court may direct further inquiry.

Commissions to make partitions.

13. Where a preliminary decree for partition has been passed, the Court may, in any case not provided for by section 54, issue a commission to such person as it thinks fit to make the partition or separation according to the rights as declared in such decree.

Commission to make partion of immoveable property.

14. (1) The Commissioner shall, after such inquiry as may be necessary, divide the property into as many shares as may be directed by the order under which the commission was issued, and shall allot such shares to the parties, and may, if authorised thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

Procedure of Commissioner.

(2) The Commissioner shall then prepare and sign a report or the Commissioners (where the commission was issued to more than one person and they cannot agree) shall prepare and sign separate reports appointing the share of each party and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall confirm, vary or set aside the same.

(3) Where the Court confirms or varies the report or reports it shall pass a decree in accordance with the same as confirmed or varied; but where the Court sets aside the report or reports it shall either issue a new commission or make such other order as it shall think fit.

General provisions.

Expenses of commission to be paid into Court.

15. Before issuing any commission under this Order, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed, paid into Court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners.

16. Any Commissioner appointed under this Order may, unless otherwise directed by the order of appointment,—

(a) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(b) call for and examine documents and other things relevant to the subject of inquiry;

(c) at any reasonable time enter upon or into any land or building mentioned in the order.

Attendence and examination of witnesses before Commissioner.

17. (1) The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this order whether the commission in execution of which they are so required has been issued by a Court situate within or by a Court situate beyond the limits of the State, and for the purposes of this rule the Commissioner shall be deemed to be a Civil Court.

(2) A Commissioner may apply to any Court within the local limits of whose jurisdiction a witness resides for the issue of any process which he may find it necessary to issue to or against such witness, and such Court may, in its discretion, issue such process as it considers reasonable and proper.

Parties to appear before Commissioner.

18. (1) Where a commission is issued under this Order, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

(2) Where all or any of the parties do not so appear, the Commissioner may proceed in their absence.

ORDER XXVII.

SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY.

Suits by or against Government.

1. In any suit by or against the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir], the plaint or written statement shall be signed by such person as the Government may, by general or special order, appoint in this behalf, and shall be verified by any person whom the Government may so appoint and who is acquainted with the facts of the case.

Persons authorised to act for Government.

2. Persons being ex-officio or otherwise authorised to act for the Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of the Government.

Plaints in suits by or against Government.

3. In suits by or against the [1][Judicial Minister, His Highness' Government Jammu and Kashmir], instead of inserting in the plaint the name and description and place of residence of the plaintiff or defendant, it shall be sufficient to insert the words [1][The Judicial Minister, His Highness' Government, Jammu and Kashmir].

Agent for Government to receive process.

4. The Government pleader in any Court, or such other person as [2][the Government] may for any Court appoint in this behalf, shall be the agent of the Government for the purpose of receiving processes against the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir], issued by such Court.

Fixing of day for appearance on behalf of Government.

5. The Court, in fixing the day for the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir], to answer to the plaint, shall allow reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir], or the Government, and may extend the time at its discretion.

[1]Substituted by Notification 4-L/86 as amended *vide* Council order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and 10th Phagan 1991 respectively for the words "Secretary, Jammu and Kashmir State Council."

[2]In rule 4 "the Government" substituted for "His Highness" *vide* Act X of 1996 published in Government Gazette dated 15th Bhadon 1996.

Attendance of person able to answer questions relating to suit against Government.

6. The Court may also, in any case in which the Government pleader is not accompanied by any person on the part of the [1][Judicial Minister, His Highness' Government, Jammu and Kashmir], who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Extension of time to enable public officer to make reference to Government.

7. (1) Where the defendant is a public officer and, on receiving the summons, considers it proper to make a reference to the Government before answering the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel.

(2) Upon such application the Court shall extend the time for so long as appears to it to be necessary.

Procedure in suits against public officer.

8. (1) Where the Government undertakes the defence of a suit against a public officer, the Government pleader, upon being furnished with authority to appear and answer the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register of civil suits.

(2) Where no application under sub-rule (1) is made by the Government pleader on or before the day fixed in the notice for the defendant to appear and answer, the case shall proceed as in a suit between private parties:

Provided that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

ORDER XXVIII.

SUITS BY OR AGAINST MILITARY MEN.

Officers or soldiers who cannot obtain leave may authorise any person to sue or defend for them.

1. (1) Where any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorise any person to sue or defend in his stead.

[1]Subtituted *vide* Notification 3-L/86 as amended by Council order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and 10th Chet 1991 respectively for the words 'Secretary Jammu and Kashmir State Council."

(2) The authority shall be in writing and shall be signed by the officer or soldier in the presence of (a) his commanding officer, or the next subordinate officer, if the party is himself the commanding officer, or (b) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in Court.

(3) When so filed the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this Order the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment or depot to which the officer or soldier belongs.

Person so authorised may act personally or appoint pleader.

2. Any person authorised by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the the same manner as the officer or soldier could do if present; or he may appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Service on person so authorised or on his pleader, to be good service.

3. Processes served upon any person authorised by an officer or a soldier under rule 1 or upon any pleader appointed as aforesaid by such person shall be as effectual as if they had been served on the party in person.

ORDER XXIX.

Suits by or against Corporations.

Subscription and verification of pleading.

1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.

Service on corporation.

2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(*a*) on the secretary, or on any director, or other principal officer of the corporation, or

(b) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered

office then at the place where the corporation carries on business.

3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of of the corporation who may be able to answer material questions relating to the suit.

Power to require personal attendance of office o' corporation.

ORDER XXX.

SUITS BY OR AGAINST FIRMS AND PERSONS CARRYING ON BUSINESS IN NAMES OTHER THAN THEIR OWN.

1. (1) Any two or more persons claiming or being liable as partners and carrying on business in the State may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action, and any party to a suit may in such case apply to the Court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partners in such firm, to be furnished and verified in such manner as the Court may direct.

Suing of partners in name of firm.

(2) Where persons sue or are sued as partners in the name of their firm under sub-rule (1), it shall, in the case of any pleading or other document required by or under this Code to be signed, verified or certified by the plaintiff or the defendant, suffice if such pleading or other document is signed, verified or certified by any one of such persons.

2. (1) Where a suit is instituted by partners in the name of their firm, the plaintiffs or their pleader shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the suit is instituted.

Disclosure of partners' names.

(2) Where the plaintiffs or their pleader fail to comply with any demand made under sub-rule (1), all proceedings in the suit may, upon an application for that purpose, be stayed upon such terms as the Court may direct.

(3) Where the names of the partners are declared in the manner referred to in sub-rule (1), the suit shall proceed in the the same manner, and the same consequences in all respects shall follow, as if they had been named as plaintiffs in the plaint:

Provided that all the proceedings shall nevertheless con-

tinue in the name of the firm.

Service.

3. Where persons are sued as partners in the name of their firm, the summons shall be served either—

(a) upon any one or more of the partners, or

(b) at the principal place at which the partnership business is carried on within the State upon any person having, at the time of service, the control or management of the partnership business there,

as the Court may direct; and such service shall be deemed good service upon the firm so sued, whether all or any of the partners are within or without the State:

Provided that, in the case of a partnership, which has been dissolved to the knowledge of the plaintiff before the institution of the suit, the summons shall be served upon every person within the State whom it is sought to make liable.

Right of suit on death of partner.

4. (1) Notwithstanding anything contained in section 45 of the Contract Act, where two or more persons may sue or be sued in the name of a firm under the foregoing provisions and any of such persons dies, whether before the institution or during the pendency of any suit, it shall not be necessary to join the legal representative of the deceased as a party to the suit.

(2) Nothing in sub-rule (1) shall limit or otherwise affect any right which the legal representative of the deceased may have—

(a) to apply to be made a party to the suit, or

(b) to enforce any claim against the survivor or survivors.

Notice in what capacity served.

5. Where a summons is issued to a firm and is served in the manner provided by rule 3, every person upon whom it is served shall be informed by notice in writing given at the time of such service, whether he is served as a partner or as a person having the control or management of the partnership business, or in both characters, and, in default of such notice, the person served shall be deemed to be served as a partner.

Apearance of partners.

6. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names, but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

No apperance except by partners.

7. Where a summons is served in the manner provided by rule 3 upon a person having the control or management of the partnership business,

no appearance by him shall be necessary unless he is a partner of the firm sued.

Appearance under protest.

8. Any person served with summons as a partner under rule 3 may appear under protest, denying that he is a partner, but such appearance shall not preclude the plaintiff from otherwise serving a summons on the firm and obtaining a decree against the firm in default of appearance where no partner has appeared.

Suits between co-partners

9. This Order shall apply to suits between a firm and one or more of the partners therein and to suits between firms having one or more partners in common; but no execution shall be issued in such suits except by leave of the Court, and, on an application for leave to issue such execution, all such accounts and inquiries may be directed to be taken and made and directions given as may be just.

Suit against person carrying on business in name other than his own.

10. Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name; and, so far as the nature of the case will permit, all rules under this Order shall apply.

ORDER XXXI.

SUITS BY OR AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Representation of beneficiaries in suits concerning porperty vested in trustees, etc.

1. In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor, or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made parties.

Joinder of trustees, executors and administrators.

2. Where there are several trustees, executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that the executors who have not proved their testator's will, and trustees, executors and administrators outside the State, need not be made parties.

3. Unless the Court directs otherwise, the husband of a married trustee, administratrix or executrix shall not as such be a party to a suit by or against her.

Husband of married executrix not to join.

ORDER XXXII.

SUITS BY OR AGAINST MINORS AND PERSONS OF UNSOUND MIND.

1. Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor.

Minor to sue by next friend.

2. (1) Where a suit is instituted by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken of the file, with costs to be paid by the pleader or other person by whom it was presented.

Where suit is instituted without next friend, plaint to be taken off the file.

(2) Notice of such application shall be given to such person, and the Court, after hearing his objections (if any), may make such order in the matter as it thinks fit:

3. (1) Where the defendant is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor.

Guardian for the suit to be appointed by Court for minor defendant.

(2) An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff.

(3) Such application shall be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in controversy in the suit adverse to that of the minor and that he is a fit person to be so appointed.

(4) No order shall be made on any application under this rule except upon notice to the minor and to any guardian of the minor appointed or declared by an authority competent in that behalf, or, where there is no such guardian, upon notice to the father or other natural guardian of the minor, or, where there is no father or other natural guardian, to the person in whose care the minor is, and after hearing any objection which may be urged on behalf of any person served with notice under this sub-rule.

[1][(5) A person appointed under sub-rule (1) to be guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such

[1]Sub-rule (5) added *vide* Act VI of 1995 published in Government Gazette dated 17th May 1995.

throughout all proceedings arising out of the suit including proceedings in any appellate or revisional Court and any proceeding in the execution of a decree.

Who may act as next friend or be appointed guardian for the suit.

4. (1) Any person who is of sound mind and has attained majority may act as next friend of a minor or as his guardian for the suit:

Provided that the interest of such person is not adverse to that of the minor and that he is not, in the case of a next friend, a defendant, or, in the case of a guardian for the suit, a plaintiff.

(2) Where a minor has a guardian appointed or declared by competent authority, no person other than such guardian shall act as the next friend of the minor or be appointed his guardian for the suit unless the Court considers, for reasons to be recorded, that it is for the minor's welfare that another person be permitted to act or be appointed, as the case may be.

(3) No person shall without his consent be appointed guardian for the suit.

(4) Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any of its officers to be such guardian, and may direct that the costs to be incurred by such officer in the performance of his duties as such guardian shall be borne either by the parties or by any one or more of the parties to the suit, or out of any fund in Court in which the minor is interested, and may give directions for the repayment or allowance of such costs as justice and the circumstances of the case may require.

Representation of minor by next friend or guardian for the suit.

5. (1) Every application to the Court on behalf of a minor, other than an application under rule 10, sub-rule (2), shall be made by his next friend or by his guardian for the suit.

(2) Every order made in a suit or on any application, before the Court in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, where the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Receipt by next friend or guardian for the suit of property under decree for minor.

6. (1) A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other moveable property on behalf of a minor either—

(*a*) by way of compromise before decree or order, or

(*b*) under a decree or order in favour of the minor.

(2) Where the next friend or guardian for the suit has

not been appointed or declared by competent authority to be guardian of the property of the minor, or, having been so appointed or declared, is under any disability known to the Court to receive the money or other moveable property, the Court shall, if it grants him leave to receive the property, require such security and give such directions as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

Agreement or compromise by next friend or guardian for the suit.

7. (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

Retirement of, next friend.

8. (1) Unless otherwise ordered by the Court, a next friend shall not retire without first procuring a fit person to be put in his place and giving security for the costs already incurred.

(2) The application for the appointment of a new next friend shall be supported by an affidavit showing the fitness of the person proposed, and also that he has no interest adverse to that of the minor.

Removal of next friend.

9. (1) Where the interest of the next friend of a minor is adverse to that of the minor or where he is so connected with a defendant whose interest is adverse to that of the minor as to make it unlikely that the minor's interest will be properly protected by him, or where he does not do his duty, or, during the pendency of the suit ceases to reside within the State, or for any other sufficient cause, application may be made on behalf of the minor or by a defendant for his removal; and the Court, if satisfied of the sufficiency of the cause assigned, may order the next friend to be removed accordingly, and make such other order as to costs as it thinks fit.

(2) Where the next friend is not a guardian appointed or declared by an authority competent in this behalf, and an application is made by a guardian so appointed or declared, who desires to be himself appointed in the place of the next friend, the Court shall remove the next friend unless it considers for reasons to be recorded by it, that the guardian ought not to be appointed the next friend of the minor, and shall thereupon appoint the applicant to be next friend in his place upon such terms as to the costs already incurred in the suit as it thinks fit.

Stay of proceedings on removal, etc. of next friend.

10. (1) On the retirement, removal or death of the next friend of a minor, further proceedings shall be stayed until the appointment of next friend in his place.

(2) Where the pleader of such minor omits, within a reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or in the matter in issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Retirement, removal or death of guardian for the suit.

11. (1) Where the guardian for the suit desires to retire or does not do his duty, or where other sufficient ground is made to appear, the Court may permit such guardian to retire or may remove him, and may make such order as to costs as it thinks fit.

(2) Where the guardian for the suit retires, dies or is removed by the Court during the pendency of the suit, the Court shall appoint a new guardian in his place.

Course to be followed by minor plaintiff or applicant on attaining majority.

12. (1) A minor plaintiff or a minor not a party to a suit on whose behalf an application is pending shall, on attaining majority, elect whether he will proceed with the suit or application.

(2) Where he elects to proceed with the suit or application, he shall apply for an order discharging the next friend and for leave to proceed in his own name.

(3) The title of the suit or application shall in such case be corrected so as to read henceforth thus:—

'A. B., late a minor, by C. D., his next friend, but now having attained majority."

(4) Where he elects to abandon the suit or application, he shall, if a sole plaintiff or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or opposite party or which may have been paid by his next friend.

(5) Any application under this rule may be made *ex parte*: but no order discharging a next freind and permitting a minor plaintiff to proceed in his own name shall be made without notice to the next friend.

Where minor co-plaintiff attaining majority desires to repudiate suit.

13. (1) Where a minor co-plaintiff on attaining majority desires to repudiate the suit, he shall apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

(2) Notice of the application shall be served on the next friend, on any co-plaintiff and on the defendant.

(3) The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

(4) Where the applicant is a necessary party to the suit, the Court may direct him to be made a defendant.

Unreasonable or improper suit.

14. (1) A minor on attaining majority may, if a sole plaintiff, apply that a suit instituted in his name by his next friend be dismissed on the ground that it was unreasonable or improper.

(2) Notice of the application shall be served on all the parties concerned; and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit, or make such other order as it thinks fit.

Application of rules to persons of unsound mind.

15. The provisions contained in rules 1 to 14, so far as they are applicable, shall extend to persons adjudged to be of unsound mind and to persons who though not so adjudged are found by the Court on inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued.

Saving for Princes and Chiefs.

16. Nothing in this Order shall apply to a Sovereign Prince or Ruling Chief suing or being sued in the name of his State, or being sued by direction of His Highness in the name of an agent or in any other name, or shall be construed to affect or in any way derogate from the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

ORDER XXXIII.

SUITS BY PAUPERS.

Suits may be instituted in *forma pauperis*.

1. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

Contents of application.

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule

of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

Presentation of application.

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Examination of applicant.

4. (1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the applicant, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken.

Rejection of application.

5. The Court shall reject an application for permission to sue as a pauper—

(a) where it is not framed and presented in the manner prescribed by rules 2 and 3, or

(b) where the applicant is not a pauper, or

(c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or

(d) where his allegations do not show a cause of action, or

(e) where he has entered into any agrement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

Notice of day for receiving evidence of applicant's pauperism.

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may

be adduced in disproof thereof.

Procedure at hearing.

7. (1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

Procedure if application admitted.

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit. It shall, however, be within the competence of the Court, in case of the extreme poverty of the plaintiff to exempt him from payment of process fees.

Dispaupering.

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

Costs where pauper succeeds.

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the Government from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

Procedure where pauper fails.

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

(a) because the summons for the defendant to appear

and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or

(b) because the plaintiff does not appear when the suit is called on for hearing,

the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

Government may apply for payment of court-fees.

12. The Government shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10 or rule 11.

Government to be deemed a party.

13. All matters arising between the Government and any party to the suit under rule 10, rule 11 or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

Copy of decree to be sent to Collector.

14. Where an order is made under rule 10, rule 11 or rule 12, the Court shall forthwith cause a copy of the decree to be forwarded to the Collector.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the Government and by the opposite party in opposing his application for leave to sue as a pauper.

Costs.

16. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism shall be costs in the suit.

ORDER XXXIV.

SUITS RELATING TO MORTGAGES OF IMMOVEABLE PROPERTY.

Parties to suits for foreclosure, sale and redemption.

1. Subject to the provisions of this Code, all persons having an interest either in the mortgage-security or in the right of redemption shall be joined as parties to any suit relating to to the mortgage.

Explanation.—A puisne mortgagee may sue for foreclosure or for sale without making the prior mortgagee a party

to the suit; and a prior mortgagee need not be joined in a suit to redeem a subsequent mortgage.

[1][**2.** (1) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree:—

Preliminary decree in foreclosure suit.

(a) ordering that an account be taken of what was due to the plaintiff at the date of such decree for:—

(i) principal and interest on the mortgage,

(ii) the cost of suit, if any, awarded to him, and

(iii) other costs, charges, and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon, or

(b) declaring the amount so due at that date, and

(c) directing:—

(i) that, if the defendant pays into Court the amount so found or declared due on or before such date the Court may fix within six months from the date on which the Court confirms and counter-signs the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest, on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property and shall, if so required, retransfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest the plaintiff shall be entitled to apply for a final

[1]Rules 2 to 8 of O. 34 substituted *vide* Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996.

decree debarring the defendant from all rights to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(3) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from or subrogated to the rights of any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in foreclosure suit.

3. (1) Where, before a final decree debarring the defendant from all rights to redeem the mortgaged property has been passed the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 2, the Court shall on application made by the defendant in this behalf pass a final decree:—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree and if necessary,

(b) ordering him to retransfer at the cost of the defendant the mortgaged property as directed in the said decree and also if necessary,

(c) ordering him to put the defendant in possession of the property.

(2) Where payment in accordance with sub-rule (1) has not been made the Court shall on application made by the plaintiff in this behalf pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all rights to redeem the mortgaged property and also if necessary ordering the defendant to put the plaintiff in possession of the property.

(3) On the passing of a final decree under sub-rule (2) all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Preliminary decree in suit for sale.

4. (1) In a suit for sale if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (a), (b) and (c) (i) of sub-rule (1) of rule 2 and further directing that in default of the defendant paying as therein mentioned the plaintiff shall be entitled to apply for a final decree directing that the

mortgaged property or a sufficient part thereof be sold and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest and the balance if any be paid to the defendant or other persons entitled to receive the same.

(2) The Court may of its own motion or on good cause shown and upon terms to be fixed by the Court from time to time at any time before a final decree for sale is passed extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Power to decree sale in foreclosure suit.

(3) In a suit for foreclosure in the case of an anomalous mortgage if the plaintiff succeeds the Court may at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or pesons deriving title from or subrogated to the rights of any such mortgagees are joined as parties the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and libilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in suit for sale.

5. (1) Where on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall on application made by the defendant in this behalf pass a final decree or if such decree has been passed, an order:—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree and, if necessary,

(b) ordering him to transfer the mortgaged property as directed in the said decree and, also, if necessary,

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule the Court shall not pass an order under sub-rule (1) of this rule unless the defendant in addition to the amount mentioned in sub-rule (1) deposits in Court for payment to the purchaser a sum equal to 5 per cent. of the amount of the purchase money paid into Court by the purchaser.

Where such deposit has been made the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal-to 5 per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made the court shall on application made by the plaintiff in this behalf pass a final decree directing that the mortgaged property or a sufficient part thereof be sold and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

Recovery of balance due on mortgage in suit for sale.

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff the Court on application by him may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

Preliminary decree in redemption suit.

7. (1) In a suit for redemption if the plaintiff succeeds the Court shall pass a preliminary decree:—

(a) Ordering that an account be taken of what was due to the defendant at the date of such decree for:—

(i) principal and interest on the mortgage;

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of his mortgage-security together with interest thereon;

or

(b) declaring the amount so due at that date; and

(c) directing—

(i) that if the plaintiff pays into Court, the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (a) or from the date on which such amount is declared in Court under clause (b) as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10 together with subsequent interest on such sums respectively as pro-

vided in rule 11, the defendant, shall deliver up to the plaintiff, or to such person as the plaintiff appoints all documents in his possession or power relating to the mortgaged property and shall if so required re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or where the defendant claims by derived title, by those under whom he claims and shall also, if necessary, put the plaintiff in possession of the property; and

(ii) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(a) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(b) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all rights to redeem the property.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Final decree in redemption suit.

8. (1) Where before a final decree debarring the plaintiff from all rights to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (3) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (1) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order

(a) ordering the defendant to deliver up the documents referred to in the preliminary decree, and, if necessary,

(b) ordering him to re-transfer at the cost of the plain-

tiff the mortgaged property as directed in the said decree; and also if necessary,

(c) ordering him to put the plaintiff in possession of the property.

(2) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (1) deposits in Court for the payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into ourt by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall on application made by the defendant in this behalf—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all rights to redeem the mortgaged property and, also if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same.]

[1][**8-A.** Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance.]

Recovery of balance due on mortage in suit for redemption.

9. Notwithstanding anything hereinbefore contained, if it appears, upon taking the account referred to in rule 7, that nothing is due to the defendant or that he has been overpaid, the Court shall pass a decree directing the defendant, if so required, to retransfer the property and to pay to the plaintiff the amount which may be

Decree where nothing is found due or where mortgagee has been overpaid.

[1]Rule 8-A of O. 34 added *vide* Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996.

found due to him; and the plaintiff shall, if necessary, be put in possession of the mortgaged property.

[1][**10.** In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

Costs of mortgagee subsequent to decree.

[1]**11.** In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—

Payment of interest.

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage:—

(i) on the principal amount found or declared due on the mortgage, at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable;

(ii) on the amount of the costs of the suit awarded to the mortgagee, at such rate as the Court deems reasonable from the date of the preliminary decree, and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum, and

(b) subsequent interest up to the date of realisation or actual payment at such rate as the Court deems reasonable:—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10.]

12. Where any property the sale of which is directed

[1]Rules 10 and 11 of O. 34 substituted *vide* Act VII of 1996 published in Government Gazette 15th Bhadon 1996.

Sale of proprety subject to prior mortgage.

under this Order is subject to a prior mortgage, the Court may, with the consent of the prior mortgagee, direct that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold.

Application of proceeds.

13. (1) Such proceeds shall be brought into Court and applied as follows:—

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, in payment of whatever is due to the prior mortgagee on account of the prior mortgage, and of costs, properly incurred in connection therewith;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or if there are more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

(2) Nothing in this rule or in rule 12 shall be deemed to affect the powers conferred by section 57 of the Transfer of Property Act.

Suit for sale necessary for bringing mortgaged property to sale.

14. (1) Where a mortgagee has obtained a decree for the payment of money in satisfaction of a claim arising under the mortgage, he shall not be entitled to bring the mortgaged property to sale otherwise than by instituting a suit for sale in enforecement of the mortgage, and he may institute such suit notwithstanding anything contained in Order II, rule 2.

Charges.

15. All the provisions contained in this Order as to the sale or redemption of mortgaged property shall, so far as may be, apply to property subject to a charge within the meaning of section 100 of the Transfer of Property Act.

ORDER XXXV.

INTERPLEADER.

Plaint in interpleader-suit.

1. In every suit of interpleader the plaint shall, in addition to the other statements necessary for plaints, state—

(a) that the plaintiff claims no interest in the subject-

matter in dispute other than for charges or costs;

(b) the claims made by the defendants severally; and

(c) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into Court.

2. Where the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff may be required to so pay or place it before he can be entitled to to any order in the suit.

Procedure where defendant is suing plaintiff.

3. Where any of the defendants in an interpleader-suit is actually suing the plaintiff in respect of the subject-matter of such suit, the Court in which the suit against the plaintiff is pending shall, on being informed by the Court in which the interpleader-suit has been instituted, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and in so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Procedure at first hearing.

4. (1) At the first hearing the Court may—

(a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit; or

(b) if it thinks that justice or convenience so require, retain all parties until the final disposal of the suit.

(2) Where the Court finds that the admissions of the parties or other evidence enable it to do so, it may adjudicate the title to the thing claimed.

(3) Where the admissions of the parties do not enable the Court to adjudicate, it may direct—

(a) that an issue or issues between the parties be framed and tried, and

(b) that any claimant be made a plaintiff in lieu of or in addition to the original plaintiff,

and shall proceed to try the suit in the ordinary manner.

Agents and tenants may not institute interpleader-suits.

5. Nothing in this Order shall be deemed to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(*a*) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

Charge for plaintiff's costs.

6. Where the suit is properly instituted the Court may provide for the costs of the original plaintiff by giving him a charge on the thing claimed or in some other effectual way.

ORDER XXXVI.

SPECIAL CASE.

Power to state case for Court's opinion.

1. (1) Parties claiming to be interested in the decision of any question of fact or law may enter into an agreement in writing stating such question in the form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,—

(a) a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(c) one or more of the parties shall do, or refrain from doing, some other particular act specified in the agreement.

(2) Every case stated under this rule shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and specify such documents as may be necessary to enable the Court to decide the question raised thereby.

Where value of subject-matter must be stated

2. Where the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement to be filed and registered as suit.

3. (1) The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

(2) The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested as plaintiff or plaintiffs, and the

other or the others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

4. Where the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court and shall be bound by the statements contained therein.

Hearing and disposal of case.

5. (1) The case shall be set down for hearing as a suit instituted in the ordinary manner, and the provisions of this Code shall apply to such suit so far as the same are applicable.

(2) Where the Court is satisfied, after examination of the the parties, or after taking such evidence as it thinks fit,—

(a) that the agreement was duly executed by them,

(b) that they have a *bona fide* interest in the question stated therein, and

(c) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so pronounced a decree shall follow.

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[1]ORDER XXXVII.

SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

Application of order.

1. This order shall apply only to the High Court.

Institution of summary suits upon bill of exchange etc.

2. (1) All suits upon bills of exchange, hundies or promissory notes may, in case the plaintiff desires to proceed hereunder, be instituted by presenting a plaint in the form prescribed; but the summons shall be in Form No. 4 in Appendix B or in such other form as may be, from time to time, prescribed.

(2) In any case in which the plaint and summons are in such forms, respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter provided so to appear and defend; and, in default of his obtaining such leave or of his appearance and defence in pursuance thereof, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree

[2][(a) for the principal sum due on the instrument and for interest calculated in accordance with the provisions of section

[1]Or 37 inserted *vide* Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

[2]Words within brackets in rule 2 (2) of O. 37 were substituted *vide* Act No. 14 of 1988 published in Government Gazette dated 12th Chet 1988.

79 or 80 as the case may be, of the Negotiable Instruments Act, 1977, upto the date of the institution of the suit, or for the sum mentioned in the summons, whichever is less, and for interest upto the date of decree at the same rate or at such other rate as the Court thinks fit; and

(b) for such subsequent interest, if any as the Court may order under section 34 of this Code, and

(c) for such sum for costs as may be prescribed;

Provided that, if the plaintiff claims more than such fixed sum for costs, the costs shall be ascertained in the ordinary way. A decree passed under this rule may be executed forthwith.]

Defendant showing defence on merits to have leave to appear.

3. (1) The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.

(2) Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.

Power to set aside decree.

4. After decree the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it seems reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill etc., to be deposited with officer of Court.

5. In any proceeding under this Order the Court may order the bill, hundi or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-acceptance of dishonoured bill or not.

6. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies for the recovery of the exepenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this Order for the recovery of the amount of such bill or note.

Procedure in suits.

7. Save as provided by this Order, the procedure in suits hereunder shall be the same as the procedure in suits instituted in the ordinary manner.

ORDER XXXVIII.

ARREST BEFORE JUDGMENT.

Where defendant may be called upon to furnish security for appearance.

1. Where at any stage of a suit, other than a suit of the nature referred to in section 16, clauses (a) to (d), the Court is satisfied, by affidavit or otherwise,—

(a) that the defendant, with intent to delay the plaintiff, or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him,—

(i) has absconded or left the local limits of the jurisdiction of the Court, or

(ii) is about to abscond or leave the local limits of the jurisdiction of the Court, or

(iii) has disposed of or removed from the local limits of the jurisdiction of the Court his property or any part thereof, or

(b) that the defendant is about to leave the State under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security for his appearance:

Provided that the defendant shall not be arrested if he pays to the officer entrusted with the execution of the warrant any sum specified in the warrant as sufficient to satisfy the plaintiff s claim; and such sum shall be held in deposit by the Court until the suit is disposed of or until the further order of the Court.

Security.

2. (1) Where the defendant fails to show such cause the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him, or to furnish security for his appearance at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the suit, or make such order as it thinks fit in regard to the sum which may have been paid by the defendant under the proviso to the last preceding rule.

(2) Every surety for the appearance of a defendant shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

3. (1) A surety for the appearance of a defendant, may

Procedure on application by surety to be discharged.

at any time apply to the Court in which he became such surety to be discharged from his obligation.

(2) On such application being made, the Court shall summon the defendant to appear or, if it thinks fit, may issue a warrant for his arrest in the first instance.

(3) On the appearance of the defendant in pursuance of the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendent fails to furnish security or find fresh security.

4. Where the defendant fails to comply with any order under rule 2, or rule 3, the Court may commit him to the civil prison until the decision of the suit, or, where a decree is passed against the defendant, until the decree has been satisfied:

Provided that no person shall be detained in prison under this rule in any case for a longer period than six months, nor for a longer period than six weeks when the amount or vlaue of the subject-matter of the suit does not exceed fifty rupees:

Provided also that no person shall be detained in prison under this rule after he has complied with such order.

Attachment before Judgment.

Where defendant may be called upon to furnish security for production of property.

5. (1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,—

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

Attachment where cause not shown or security not furnished.

6. (1) Where the defendant fails to show cause why he should not furnish security, or fails to furnish the security required, within the time fixed by the Court, the Court may order that the property specified, or such portion thereof as appear sufficient to satisfy any decree which may be passed in the suit, be attached.

(2) Where the defendant shows such cause or furnishes the required security, and the property specified or any portion of it has been attached, the Court shall order the attachment to be withdrawn, or make such other order as it thinks fit.

Mode of making attachment.

7. Save as otherwise expressly provided, the attachment shall be made in the manner provided for the attachment of property in execution of a decree.

Investigation of claim to property attached before judgment.

8. Where any claim is preferred to property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for the payment of money.

Removal of attachment when security furnished or suit dismissed.

9. Where an order is made for attachment before judgment, the Court shall order the attachment to be withdrawn when the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment before judgment not to affect rights of stranger nor bar decree-holder from applying for sale.

10. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Property attached before judgment not to be re-attached in execution of decree.

11. Where property is under attachment by virtue of the provisions of this Order and a decree is subsequently passed in favour of the plaintiff, it shall not be necessary upon an application for execution of such decree to apply for a re-attachment of the property.

Agricultural produce not attachable before judgment.

12. Nothing in this Order shall be deemed to authorise the plaintiff to apply for the attachment of any agricultural produce in the possession of an agriculturist, or to empower the Court to order the attachment or production of such produce.

[1]**13.** [Nothing in this order shall be deemed to empower any Court of Small Causes to make an order for the attachment of immoveable property.]

Small Cause Court not to attach immovable property.

ORDER XXXIX.

TEMPORATY INJUNCTIONS AND INTERLOCUTORY ORDERS.

Temporary Injunctions.

1. Where in any suit it is proved by affidavit or otherwise—

Cases in which temporary injunction may be granted.

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defraud his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders.

2. (1) In any suit for restraining the defendant from committing a breach of contract or other injury of any kind, whether compensation is claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

Injunction to restrain repetition or continuance of breach.

(2) The Court may by order grant such injunction, on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

(3) In case of disobedience, or of breach of any such terms, the Court granting an injunction may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not ecxeeding six months, unless in the meantime the Court directs his release.

[1]Rule 13 added *vide* Act 9 of 1988 published in Government Gazette dated 18th Mar 1988.

(4) No attachment under this rule shall remain in force for more than one year, at the end of which time, if the disobedience or breach continues, the property attached may be sold, and out of the proceeds the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the party entitled thereto.

Before granting injunction Court to direct notice to opposite party.

3. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Order for injunction may be discharged, varied or set aside.

4. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Injunction to corporation binding on its officers.

5. An injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action it seeks to restrain.

Interlocutory Orders.

Power to order interim sale.

6. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit of any moveable property, being the subject-matter of such suit, or attached before judgment in such suit, which is subject to speedy and natural decay, or which for any other just and sufficient cause it may be desirable to have sold at once.

Detention, preservation, inspection, etc., of subject matter of suit.

7. (1) The Court may, on the application of any party to a suit, and on such terms as it thinks fit,—

(*a*) make an order for the detention, preservation or inspection of any property which is the subject-matter of such suit, or as to which any question may arise therein;

(*b*) for all or any of the purposes aforesaid authorise any person to enter upon or into any land or building in the possession of any other party to such suit; and

(*c*) for all or any of the purposes aforesaid authorise any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

(2) The provisions as to execution of process shall apply, *mutatis mutandis*, to persons authorised to enter under this rule.

8. (1) An application by the plaintiff for an order under rule 6 or rule 7 may be made after notice to the defendant at any time after institution of the suit.

Application for such orders to be after notice.

(2) An application by the defendant for a like order may be made after notice to the plaintiff at any time after appearance.

9. Where land paying revenue to Government, or a tenure liable to sale, is the subject-matter of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may, upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure:

When party may be put in immediate possession of land the subject-matter of suit.

and the Court in its decree may award against the defaulter the amount so paid, with interest thereon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

10. Where the subject-matter of a suit is money or some other thing capable of delivery and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

Deposit of money, etc., in Court.

ORDER XL.

APPOINTMENT OF RECEIVERS.

1. (1) Where it appears to the Court to be just and convenient, the Court may by order—

Appointment of receivers.

(a) appoint a receiver of any property, whether before or after decree;

(b) remove any person from the possession or custody of the property;

(c) commit the same to the possession, custody or management of the receiver; and

(d) confer upon the receiver all such powers, as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has, or such of those powers as the Court thinks fit.

(2) Nothing in this rule shall authorise the Court to remove from the possession or custody of property any person whom any party to the suit has not a present right so to remove.

Remuneration.

2. The Court may by general or special order fix the amount to be paid as remuneration for the services of the receiver.

Duties.

3. Every receiver so appointed shall—

(a) furnish such security (if any) as the Court thinks fit, duly to account for what he shall receive in respect of the property;

(b) submit his accounts at such periods and in such form as the Court directs;

(c) pay the amount due from him as the Court directs; and

(d) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Enforcement of receivers' duties.

4. Where a receiver—

(a) fails to submit his accounts at such periods and in such form as the Court directs, or

(b) fails to pay the amount due from him as the Court directs, or

(c) occasions loss to the property by his wilful default or gross negligence,

the Court may direct his property to be attached and may sell such property, and may apply the proceeds to make good any amount found to be due from him or any loss occasioned by him, and shall pay the balance (if any) to the receiver.

When Collector may be appointed receiver.

5. Where the property is land paying revenue to the Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may, with the consent of the Collector, appoint him to be receiver of such property.

ORDER XLI.

APPEALS FROM ORIGINAL DECREES.

Form of appeal. What to accompany memorandum.

1. (1) Every appeal shall be preferred in the form of a memorandum signed by the appellant or his pleader and presented to the Court or to such officer as it appoints in this behalf. The memorandum shall be accompanied by a copy of the decree appealed from and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

(2) The memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed from without any argument or narrative, and such grounds shall be numbered consecutively.

Grounds which may be taken in appeal.

2. The appellant shall not, except by leave of the Court, urge or be heard in support of any ground of objection not set forth in the memorandum of appeal; but the Appellate Court, in deciding the appeal, shall not be confined to the grounds of objection set forth in the memorandum of appeal or taken by leave of the Court under this rule:

Provided that the Court shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memoradum.

3. (1) Where the memorandum of appeal is not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there:

(2) Where the Court rejects any memorandum it shall record the reasons for such rejection.

(3) Where a memorandum of appeal is amended, the Judge, or such officer as he appoints in this behalf, shall sign or initial the amendment.

One of several plaintiffs or defendants may obtain reversal of whole decree where it proceeds on ground common to all.

4. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plain-

tiffs or defendants, as the case may be.

Stay of proceedings and of execution.

Stay by Appellate Court.

5. (1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Stay by Court which passed the decree

(2) Where an application is made for stay of execution of an appealable decree before the expiration of the time allowed for appealing therefrom, the Court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Notwithstanding anything contained in sub-rule (3), the Court may make an *ex parte* order for stay of execution pending the hearing of the application.

Security in case of order for execution of decree appealed from.

6. (1) Where an order is made for the execution of a decree from which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be taken for the restitution of any property which may be or has been taken in execution of the decree or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court, or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

(2) Where an order has been made for the sale of immoveable property in execution of a decree, and an appeal is pending from such decree, the sale shall, on the application of the judgment-debtor to the Court which made the order, be stayed on such terms as to giving security or otherwise as the Court thinks fit until the appeal is disposed of.

No security to be required from the Government or a public officer in certain cases.

7. No such security as is mentioned in rules 5 and 6 shall be required from the [1][Judicial Minister His Highness' Government, Jammu and Kashmir], or, where the Government has undertaken the defence of the suit, from any public officer sued in respect of an act alleged to be done by him in his official capacity.

Exercise of powers in appeal from order made in execution of decree.

8. The powers conferred by rules 5 and 6 shall be exerciseable where an appeal may be or has been preferred not from the decree but from an order made in execution of such decree.

Procedure on admission of appeal.

Registry of memorandum of appeal.

9. (1) Where a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Register of Appeals.

(2) Such book shall be called the Register of Appeals.

Appellate Court may require appellant to furnish security for costs.

10. (1) The Appellate Court may in its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appeallant security for the costs of the appeal, or of the original suit, or of both:

Where appellant resides out of the State.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of the state and is not possessed of any sufficient immoveable property within the State other than the property (if any) to which the appeal relates.

(2) Where such security is not furnished within such time as the Court orders, the Court shall reject the appeal.

Power to dismiss appeal without sending notice to Lower Court.

11. (1) The Appellate Court, after sending for the record if it thinks fit so to do, and after fixing a day for hearing the appellant or his pleader and hearing him accordingly if he appears on that day, may dismiss the appeal without sending notice to the Court from whose decree the appeal is preferred and without serving notice on the respondent or his pleader.

[1]Substituted *vide* Notification 3-L/86 as amended by Council Order 46 of 1935 published in Government Gazette dated 7th Bhadon 1986 and Government Gazette dated 10th Phagan 1991 respectively.

(2) If on the day fixed or any other day to which the hearing may be adjourned the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(3) The dismissal of an appeal under this rule shall be notified to the Court from whose decree the appeal is preferred.

Day for hearing appeal.

12. (1) Unless the Appellate Court dismisses the appeal under rule 11, it shall fix a day for hearing the appeal.

(2) Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Appellate Court to give notice to Court whose decree appealed from.

13. (1) Where the appeal is not dismissed under rule 11, the Appellate Court shall send notice of the appeal to the Court from whose decree the appeal is preferred.

Transmission of papers to Appellate Court.

(2) Where the appeal is from the decree of a Court, the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Copies of exhibits in Court whose decree appealed from.

(3) Either party may apply in writing to the Court from whose decree the appeal is preferred, specifying any of the papers in such Court of which he requires copies to be made: and copies of such papers shall be made at the expense of, and given to, the applicant.

Publication and service of notice of day for hearing appeal.

14. (1) Notice of the day fixed under rule 12 shall be affixed in the Appellate Court-house, and a like notice shall be sent by the Appellate Court to the Court from whose decree the appeal is preferred, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided for the service on a defendant of a summons to appear and answer; and all the provisions applicable to such summons, and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

(2) Instead of sending the notice to the Court from whose decree the appeal is preferred, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the provisions above referred to.

15. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

Contents of notice.

Procedure on hearing.

16. (1) On the day fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal.

Right to begin.

(2) The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply.

17. (1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

Dismissal of appeal for appellant's default.

(2) Where the appellant appears and the respondent does not appear, the appeal shall be heard *ex parte*.

Hearing appeal *ex parte*.

18. Where on the day fixed, or on any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed, the sum required to defray the cost of serving the notice, the Court may make an order that the appeal be dismissed:

Dismissal of appeal where notice not served in consequence of appellant's failure to deposit costs.

Provided that no such order shall be made although the notice has not been served upon the respondent, if on any such day the respondent appears when the appeal is called on for hearing.

19. Where an appeal is dismissed under rule 11, sub-rule (2), or rule 17 or rule 18, the appellant may apply to the Appellate Court for the re-admission of the appeal; and, where it is proved that he was prevented by any sufficient cause from appearing when the appeal was called on for hearing or from depositing the sum so required, the Court shall re-admit the appeal on such terms as to cost or otherwise as it thinks fit.

Re-admission of appeal dismissed for default.

20. Where it appears to the Court at the hearing that any person who was a party to the suit in the Court from whose decree the appeal is preferred, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a

Power to adjourn hearing and direct persons appearing interested to be made respondents.

future day to be fixed by the Court and direct that such person be made a respondent.

Re-hearing on application of respondent against whom *ex parte* decree made.

21. Where an appeal is heard *ex parte* and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to cost or otherwise as it thinks fit to impose upon him.

Upon hearing respondent may object to decree as if he had preferred separate appeal.

22. (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree on any of the grounds decided against him in the Court below, but take any cross-objection to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Form of objection and provisions applicable thereto.

(2) Such cross-objection shall be in the from of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) Unless the respondent files with the objection a written acknowledgment from the party who may be affected by such objection or his pleader of having received a copy thereof, the Appellate Court shall cause a copy to be served, as soon as may be after the filing of the objection, on such party or his pleader at the expense of the respondent.

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall so far as they can be made applicable, apply to an objection under this rule.

Remand of case by appellate Court.

23. Where the Court from whose decree an appeal is preferred has disposed of the suit upon a preliminary point and the decree is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, and may further direct what issue or issues

shall be tried in the case so remanded, and shall send a copy of its judgment and order to the Court from whose decree the appeal is preferred, with directions to re-admit the suit under its original number in the register of civil suits, and proceed to determine the suit; and the evidence (if any) recorded during the original trial shall subject to all just exceptions be evidence during the trial after remand.

Where evidence on record sufficient Appellate Court may determine case finally.

24. Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from.

25. Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the appeal is preferred, and in such case shall direct such Court to take the additional evidence required;

and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor.

Findings and evidence to be put on record. Objections to finding.

26. (1) Such evidence and findings shall form part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to any finding.

Determination of appeal.

(2) After the expiration of the period so fixed for presenting such memorandum the Appellate Court shall proceed to dertermine the appeal.

Production of additional evidence in Appellate Court.

27. (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.

Mode of taking additional evidence.

28. Wherever additional evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Points to be defined and recorded.

29. Where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Judgement in appeal.

Judgment when and where pronounced.

30. The appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.

Contents, date and signature of judgment.

31. The judgment of the Appellate Court shall be in writing and shall state—

(a) the points for determination;

(b) the decision thereon ;

(c) the reasons for the decision; and,

(d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled;

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

What judgment may direct.

32. The judgment may be for confirming, varying or reversing the decree from which the appeal is preferred, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be made in appeal, the Appellate Court may pass a decree or make an order accordingly.

Power of Court of Appeal

33. The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this

power may be exercised by the Court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection.

[1][Provided that the Appellate Court shall not make any order under section 35-A in pursuance of any objection on which the Court from whose decree the appeal is preferred has omitted or refused to make such order].

Illustration.

A claims a sum of money as due to him from X or Y, and in a suit against both obtains a decree against X. X appeals and A and Y are respondents. The Appellate Court decides in favour of X. It has power to pass a decree against Y.

[2][**34.** Where the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reason for the same.]

Dissent to be recorded.

Decree in appeal.

35. (1) The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

Date and contents of decree.

(2) The decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made.

(3) The decree shall also state the amount of costs incurred in the appeal, and by whom, or out of what property, and in what proportions such costs and the costs in the suit are to be paid.

(4) The decree shall be signed and dated by the Judge [3][or Judges who passed it;

Provided that where there are more Judges than one and there is a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.]

[1]Proviso added *vide* Act IV of 1988 published in Government Gazette dated 18th Har 1988.

[2]Rule 34 inserted *vide* Notificati on 3-L/85 publishe l in Government Gazette dated 8th Bhadon 1985.

[3]Sub-rule 4 subtituted *vide* Notification 3-L/85 published in Govegnment Gazette dated 8th Bhadon 1985.

36. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Appellate Court and at their expense.

Copies of judgment and decree to be furnished to parties.

37. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed from and shall be filed with the original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed from.

ORDER XLII.

APPEALS FROM APPELLATE DECREES.

1. The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees. The appellant shall, in addition to the copies of the decree and judgment appealed from, also file a copy of the judgment of the Court of First Instance.

Procedure.

ORDER XLIII.

APPEALS FROM ORDERS.

1. An appeal shall lie from the following orders under the provisions of section 104, namely:—

Appeals from orders.

(a) an order under rule 10 of Order VII returning a plaint to be presented to the proper Court;

(b) an order under rule 10 of Order VIII pronouncing judgment against a party;

(c) an order under rule 9 of Order IX rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(d) an order under rule 13 of Order IX rejecting an application (in a case open to appeal) for an order to set side a decree passed *ex parte*;

(e) an order under rule 4 of Order X pronouncing judgment against a party;

(f) an order under rule 21 of Order XI;

(g) an order under rule 10 of Order XVI for the attachment of property;

(h) an order under rule 20 of Order XVI pronouncing judgment against a party;

(i) an order under rule 34 of Order XXI on an objection to the draft of a document or of an endorsement;

(ii) an order under sub-rule 2, rule 11 of Order XX passed without the consent of the parties;

(j) an order under rule 72 or rule 92 of Order XXI setting aside or refusing to set aside a sale;

[1][(jj) an order passed by any Court other than the High Court under Order XXI(A) in the exercise of insolvency jurisdiction.]

(k) an order under rule 9 of Order XXII refusing to set aside the abatement or dismissal of a suit;

(l) an order under rule 10 of Order XXII giving or refusing to give leave;

(m) an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction;

(n) an order under rule 2 of Order XXV rejecting an application (in a case open to appeal) for an order to set aside the dismissal of a suit;

(o) an order under [2][rule 2, rule 4 or rule 7] of Order XXXIV refusing to extend the time for the payment of mortgage-money;

(oo) an order under rule 5 of Order XXXIII, rejecting an application for permission to sue as a pauper.

(p) orders in interpleader-suits under rule 3, rule 4 or rule 6 of Order XXXV;

(q) an order under rule 2, rule 3 or rule 6 of Order XXXVIII;

(r) an order under rule 1, rule 2, rule 4 or rule 10 of Order XXXIX;

(s) an order under rule 1 or rule 4 of Order XL;

(t) an order of refusal under rule 19 of Order XLI to re-admit, or under rule 21 of Order XLI to re-hear, an appeal;

(u) an order under rule 23 of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court;

(v) an order under rule 4 of Order XLVII granting an application for review.

Procedure.

2. The rules of Order XLI shall apply, so far as may be, to appeals from orders.

[1]Added *vide* Notification No. 9-L/82 published in Government Gazette dated 9th Magher 1928.

[2]In clause (o) words within brackets substituted for the words "rule 3 or rule 8" *vide* Act VII of 1996 published in Government Gazette dated 15th Bhadon 1996.

ORDER XLIV.

PAUPER APPEALS.

Who may appeal as pauper.

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the persentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable.

Provided that the Court shall reject the appplication unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Procedure on application for admission of appeal.

2. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Inquiry into pauperism.

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

ORDER XLV.

APPEALS TO HIS HIGHNESS.

[1]**1.** Repealed.

2 to 12. Omitted.

[1]**13.** Repealed.

[1]**14.** Repealed.

Procedure to enforce orders of His Highness.

15. (1) Whoever desires to obtain execution of any order of His Highness shall apply by petition, accompanied by a certified copy of the decree passed or order made [2][* * *]and sought to be executed, to [2][the High Court].

[1]Rules 1, 13, 14 and 16 repealed *vide* Notification 8-L/85 published in Government Gazette dated 8th Bhadon 1985.

[2]In rule 15 (1) words "in appeal" in line 4 omitted and for the last words "the Court from which the appeal to His Highness was preferred" the words "the High Court" substituted *vide* Notification 8-L/85 published in Government Gazette 8th Bhadon 1985.

(2) Such Court shall transmit the order of His Highness to the Court which passed the first decree appealed from, or to such other Court as His Highness by such order may direct, and shall (upon the application of either party) give such directions as may be required for the execution of the same; and the Court to which the said order is so transmitted shall execute it accordingly, in the manner and according to the provisions applicable to the execution of its original decrees.

[1]**16.** Repealed.

ORDER XLVI.

REFERENCE.

Reference of question to High Court.

1. Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Court may pass decree contingent upon decision of High Court.

2. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or make an order contingent upon the decision of the High Court on the point referred;

but no decree or order shall be executed in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon the reference.

Judgment of High Court to be transmitted, and case disposed of accordingly.

3. The High Court, after hearing the parties if they appear and desire to be heard, shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Costs of reference to High Court.

4. The costs (if any) consequent on a reference for the decision of the High Court shall be costs in the case.

[1]See footnote under rule 1.

Power to alter, etc., decree of Court making reference.

5. Where a case is referred to the High Court under rule 1, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed or made in the case out of which the reference arose, and make such order as it thinks fit.

Power to refer to High Court questions as to jurisdiction in small causes.

6. (1) Where at any time before judgment a Court in which a suit has been instituted doubts whether the suit is cognizable by a Court of Small Causes or is not so cognizable, it may submit the record to the High Court with a statement of its reasons for the doubt as to the nature of the suit.

(2) On receiving the record and statement, the High Court may order the Court either to proceed with the suit or to return the plaint for presentation to such other Court as it may in its order declare to be competent to take cognizance of the suit.

Power to District Court to submit for revision proceedings had under mistake as to jurisdiction in small causes.

7. (1) Where it appears to a District Court that a Court subordinate thereto has, by reason of erroneously holding a suit to be cognizable by a Court of Small Causes or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a jurisdiction not so vested, the District Court may, and if required by a party shall, submit the record to the High Court with a statement of its reasons for considering the opinion of the subordinate Court with respect to the nature of the suit to be erroneous.

(2) On receiving the record and statement the High Court may make such order in the case as it thinks fit.

(3) With respect to any proceedings subsequent to decree in any case submitted to the High Court under this rule, the High Court may make such order as in the circumstance appears to it to be just and proper.

(4) A Court subordinate to a District Court shall comply with any requisition which the District Court may make for any record or information for the purposes of this rule.

ORDER XLVII.

REVIEW.

Application for review of judgment.

1. (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom applications for review may be made.

2. An application for review of a decree or order of a Court, not being the High Court, upon some ground other than the discovery of such new and important matter or evidence as is referred to in rule 1 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the Judge who passed the decree or made the order sought to be reviewed; but any such application may, if the Judge who passed the decree or made the order has ordered notice to issue under rule 4, sub-rule (2), proviso (a), be disposed of by his successor.

Form of applications for review.

3. The provisions as to the form of preferring appeals shall apply, *mutatis mutandis*, to applications for review.

Application where rejected.

4. (1) Where it appears to the Court that there is not sufficient ground for a review, it shall reject the application.

Application where granted.

(2) Where the Court is of opinion that the application for review should be granted, it shall grant the same:

Provided that—

(a) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree or order, a review of which is applied for: and

(b) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Application for review in Court consisting of two or more Judges.

[1][**5.** Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, connues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

Application where rejected.

6. (1) Where the application for a review is heard by more than one Judge and the Court is equally divided, the application shall be rejected.

(2) Where there is a majority, the decision shall be according to the opinion of the majority].

Order of rejection not appealable. Objections to order granting application.

7. (1) An order of the Court rejecting the application shall not be appealable; but an order granting an application may be objected to on the ground that the application was—

(a) in contravention of the provisions of rule 2,

(b) in contravention of the provisions of rule 4, or

(c) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be taken at once by an appeal from the order granting the application or in any appeal from the final decree or order passed or made in the suit.

(2) Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, where it is proved to the satisfaction of the Court

[1] Rules 5 and 6 added *vide* Notification No. 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

(3) No order shall be made under sub-rule (2) unless notice of the application has been served on the opposite party.

Registry of application granted, and order for re-hearing.

8. When an application for review is granted, a note thereof shall be made in the register and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

Bar of certain applications.

9. No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

ORDER XLVIII.

MISCELLANEOUS.

Process to be served at expense of party issuing.

1. (1) Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Costs of service.

(2) The court-fee chargeable for such service shall be paid within a time to be fixed before the process is issued.

Orders and notices how served.

2. All orders, notices and other documents required by this Code to be given to or served on any person shall be served in the manner provided for the service of summons.

Use of forms in appendices.

3. The forms given in the appendices, with such variation as the circumstances of each case may require shall be used for the purposes therein mentioned.

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[1]ORDER XLIX.

THE HIGH COURT.

Who may Serve processes of High Court.

1. Notice to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the original civil jurisdiction of the High Court, and of its testa-

[1]Order XLIX inserted *vide* Notification 3-L/85 published in Government Gazette dated 8th Bhadon 1985.

mentary and intestate jurisdictions, except summonses to defendants, writs of execution and notices to respondents, may be served by the attorneys in the suits, or by persons employed by them, or by such other persons as the High Court, by any rule or order, directs.

Rules already in force not affected.

2. Nothing in this Schedule shall be deemed to limit or otherwise affect any rules in force at the commencement of this Code for the taking of evidence or the recording of judgments and orders by the High Court.

Application of rules.

3. The following rules shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely:—

(1) rule 10 and rule 11, clauses (b) and (c), of Order VII;

(2) rule 3 of Order X;

(3) rule 2 of Order XVI;

(4) rules 5, 6, 8, 9, 10, 11, 13, 14, 15 and 16 (so far as relates to the manner of taking evidence) of Order XVIII;

(5) rules 1 to 8 of Order XX; and

(6) rule 7 of Order XXXIII (so far as relates to the making of a memorandum);

and rule 35 order XLI shall not apply to the High Court in the exercise of its appellate jurisdiction].

ORDER L.

SMALL CAUSE COURTS.

Small Cause Courts.

1. The provision hereinafter specified shall not extend to Courts constituted under the Small Causes Courts Act, or to Courts exercising the jurisdiction of a Court of Small Causes under that Act, that is to say—

(a) so much of this Schedule as relates to—

(i) suits excepted from the cognizance of a Court of Small Causes or the execution of decrees in such suits;

(ii) the execution of decrees against immoveable property or the interest of a partner in partnership property;

(iii) the settlement of issues; and

(b) the following rules and orders,—

Order II, rule 1 (frame of suit);

Order X, rule 3 (record of examination of parties);

Order XV, except so much of rule 4 as provides for the pronouncement at once of judgment;
Order XVIII, rules 5 to 12 (evidence);
Orders XLI to XLV (appeals);
Order XLVII, rules 2, 3, 5, 6, 7 (reveiw).

ORDER LI.

Omitted.

APPENDIX A.

PLEADINGS.

(1) TITLES OF SUITS.

IN THE COURT OF

A. B. (add description and residence) .. Plaintiff,

AGAINST

C. D. (add description and residence) .. Defendant.

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(2) DESCRIPTION OF PARTIES IN PARTICULAR CASES.

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[1]**Judicial Minister His Highness' Government, Jammu and Kashmir.**

The State Advocate

The Collector of

The State of

[1]Substituted *vide* Notification 3-L/88 as amended by Council Order 46 of 1988 published in Government Gazette dated 7th Bhadon 1933 and Government Gazette dated 10th Phagan 1991 respectively.

The A. B. Company, Limited, having its registered office at

A. B., a public officer of the C. D. Company

A. B. (add description and residence), on behalf of himself and all other creditors of C. D., late of (add description and residence).

A. B. (add description and residence), on behalf of himself and all other holders of debentures issued by the ..... Company, Limited.

A. B., a minor (add description and residence), by C. D. (or by the Court of Wards), his next friend.

A. B. (add description and residence), a person of unsound mind (or of week mind), by C. D., his next friend.

A. B., a firm carrying on business in partnership at

A. B. (add description and residence), by his constituted attorney C. D. (add description and residence).

A. B. (add description and residence), executor of C. D., deceased.

A. B. (add description and residence), heir of C. D., deceased.

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(3) PLAINTS.

No. 1.

MONEY LENT.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , he lent the defendant rupees repayable on the day of 19 .
2. The defendant has not paid the same, except rupees paid on the day of 19 .

[IF THE PLAINTIFF CLAIMS EXEMPTION FROM ANY LAW OF LIMITATION SAY:—]

3. The plaintiff was a minor (OR insane) from the day of till the day of .
4. [FACTS SHOWING WHEN THE CAUSES OF ACTION AROSE AND THAT THE COURT HAS JURISDICTION.]
5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of court-fees is rupees.
6. The plaintiff claims rupees, with interest at per cent. from the day of 19 .

No. 2.

MONEY OVERPAID.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.
2. The plaintiff procured the said bars to be assayed by E. F., who was paid by the defendant for such assay, and

E. F. declared each of the bars to contain 1,500 tolas of fine silver, and the plaintiff accordingly paid the defendant rupees.

3. Each of the said bars contained only 1,270 tolas of fine silver, of which facts the plaintiff was ignorant when he made the payment.

4. The defendant has not repaid the sum so overpaid.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 3.

GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E. F. sold and delivered to the defendant (one hundred barrels of flour, OR the goods mentioned in the schedule hereto annexed, OR sundry goods).

2. The defendant promised to pay rupees for the said goods on delivery (OR on the day of , SOME DAY BEFORE THE PLAINT WAS FILED).

3. He has not paid the same.

4. E. F. died on the day of 19 . By his last will he appointed his brother, the plaintiff, his executor.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

7. The plaintiff as executor of E. F. CLAIMS (RELIEF CLAIMED).

No. 4.

GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff sold and delivered to the defendant (SUNDRY ARTICLES OF HOUSE-FURNITURE), but no express agreement was made as

to the price.

2. The goods were reasonably worth rupees.

3. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 5.

GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(TITLE.)

A. B., the above named plaintiff, states as follows:—

1. On the day of 19 , B. F. agreed with the plaintiff that the plaintiff should make for him (SIX TABLES AND FIFTY CHAIRS) and that E. F. should pay for the goods on delivery rupees.

2. The plaintiff made the goods, and on the day of 19 offered to deliver them to E. F., and has ever since been ready and willing so to do.

3. E. F. has not accepted the goods or paid for them.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 6.

DEFICIENCY UPON A RE-SALE (GOODS SOLD AT AUCTION).

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff put up at auction sundry (GOODS), subject to the condition that all goods not paid for and removed by the purchaser within (TEN DAYS) after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. The defendant purchased (ONE CRATE OF CROCKERY) at the auction at the price of rupees.

3. The plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for (TEN DAYS) after.

4. The defendant did not take away the goods purchased by him, nor pay for them within (TEN DAYS) after the sale, nor afterwards.

5. On the day of 19 , the plaintiff re-sold the (CRATE OF CROCKERY), on account of the defendant, by public auction, for rupees.

6. The expenses attendant upon such re-sale amounted to rupees.

7. The defendant has not paid the deficiency thus arising, amounting to rupees.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 7.

SERVICES AT A REASONABLE RATE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. Between the day of 19 , and the day of 19 , at , plaintiff (EXECUTED SUNDRY DRAWINGS, DESIGNS AND DIAGRAMS) for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. The services were reasonably worth rupees.

3. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 8.

SERVICES AND MATERIALS AT A REASONABLE COST.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at , the plaintiff built a house (known as No. , in), and furnished the materials therefor, for the defendant, at his request but no express agreement was made as to the amount to be paid for such work and materials.

2. The work done and materials supplied were reasonably worth rupees.

3. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 9.

USE AND OCCUPATION.

(TITLE.)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased, states as follows:—

1. That the defendant occupied the (house No. , street), by permission of the said X. Y., from the day of 19 , until the day of 19, and no agreement was made at to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff as executor of X. Y. claims (RELIEF CLAIMED.)

NO. 10.

ON AN AWARD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, having a difference between them concerning (a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay), agreed in writing to submit the difference to the arbitration of E. F. and G. H., and the original document is annexed hereto.

2. On the day of 19 , the arbitrators awarded that the defendant should (pay the plaintiff rupees).

3. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 11.

ON A FOREIGN JUDGMENT.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , at , in the State (OR Kingdom) of the Court of that State (OR Kingdom) in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

ADVOCATE

No. 12.

AGAINST SURETY FOR PAYMENT OF RENT.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , E. F., hired from the plaintiff for the term of years, the (house No. , Street), at the annual rent of rupees, payable (monthly).

2. The defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.

3. The rent for the month of 19 , amounting to rupees, has not been paid.

[IF BY THE TERMS OF THE AGREEMENT, NOTICE IS REQUIRED TO BE GIVEN TO THE SURETY, ADD:—]

4. On the day of 19 , the plaintiff gave notice to the defendant of the non-payment of of the rent, and demanded payment thereof.

5. The defendant has not paid the same.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 13.

BREACH OF AGREEMENT TO PURCHASE LAND.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed.

(OR, on the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of for rupees.)

2. On the day of 19 , the plaintiff, being then the aboslute owner of the property [and the same being free from all incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [OR, was ready and willing, and is still ready and willing, and offered, to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

The defendant has not paid the money.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 14.

NOT DELIVERING GOODS SOLD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the defendant should deliver

[one hundred barrels of flour] to the plaintiff on the day of 19 , and that the plaintiff should pay therefor rupees on delivery.

2. On the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the goods.

3. The defendant has not delivered the goods, and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 15.

WRONGFUL DISMISSAL.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, OR in the capacity of foreman, OR AS THE CASE MAY BE], and that the defendnt should employ the plaintiff as such for the term of [one year] and pay him for his services rupees [monthly].

2. On the day of 19 , the plaintiff entered upon the service of the defendant and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year whereof the defendant always has had notice.

3. On the day of 19 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 16.

BREACH OF CONTRACT TO SERVE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant mutually agreed that the plaintiff should em-

ploy the defendant at an [annual] salary of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. The plaintiff has always been ready and willing to perform his part of the agreement [and on the day of 19 , offered so to do].

3. The defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 19 , he refused to serve the plaintiff as aforesaid.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 17.

AGAINST A BUILDER FOR DEFECTIVE WORKMANSHIP.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, and the original document is hereto annexed. [OR STATE THE TENOR OF THE CONTRACT.]

[2. The plaintiff duly performed all the conditions of the agreement on his part.]

3. The defendant [built the house referred to in the agreement in a bad and unworkmanlike manner].

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 18.

ON A BOND FOR THE FIDELITY OF A CLERK.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff took E. F. into his employment as a clerk.

2. In consideration thereof, on the day of 19 , the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever

loss he might sustain by reason thereof, not exceeding rupees.

[OR, 2. In consideration thereof, the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of rupees, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the plaintiff and should justly account to the plaintiff for all moneys, evidences of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void.]

[OR, 2. In consideration thereof on the same date the defendant executed a bond in favour of the plaintiff, and the original document is hereto annexed.]

3. Between the day of 19 , and the day of 19 , E. F. received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which sum he has not accounted to him, and the same still remains due and unpaid.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 19.

BY TENANT AGAINST LANDLORD, WITH SPECIAL DAMAGE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant, by a registered instrument, let to the plaintiff [the house No. , Street] for the term of years, contracting with the plaintiff, that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. All conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. On the day of 19 , during the said term, E. F., who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. The plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of G.H. and I. J. by such removal].

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 20.

On an Agreement of Indemnity.

(Title).

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant, being partners in trade under the style of A. B. and C. D., dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. The plaintiff duly performed all the conditions of the agreement on his part.

3. On the day of 19 , [a judgment was recovered against the plaintiff and defendant by E. F., in the High Court of Judicature at , upon a debt due from the firm to E. F., and on the day of 19 ,] the plaintiff paid rupees [in satisfaction of the same].

4. The defendant has not paid the same to the plaintiff.

[As in paras. 4 and 5 of Form No. 1, and Relief claimed.]

No. 21.

Procuring Property by Fraud.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant , for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. The plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of . rupees.

3. The said representations were false [OR STATE TER PARTICULAR FALSEHOODS] and were then known bd the defendant to be so.

4. The defendant has not paid for the goods. [OR, IF THE GOODS WERE NOT DELIVERED.] The plaintiff, in prepar-

ing and shipping the goods and procuring their restoration, expended rupees.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 22.

FRAUDULENTLY PROCURING CREDIT TO BE GIVEN TO ANOTHER PERSON.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant represented to the plaintiff that E. F. was solvent and in good credit, and worth rupees over all his liabilities [OR that E. F. then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit.]

2. The plaintiff was thereby induced to sell to E. F. [rice] of the value of rupees [on months credit.]

3. The said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [OR to deceive and injure the plaintiff].

4. E. F. [did not pay for the said goods at the expiration of the credit aforesaid, OR] has not paid for the said rice, and the plaintiff has wholly lost the same.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 23.

POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of

water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. On the day of 19 , the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. In consequence the water in the well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the well and water.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 24.

CARRYING ON A NOXIOUS MANUFACTURE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called , situate in .

2. Ever since the day of 19 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the lands.

3. Thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. The plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged, to remove his cattle, sheep and farming-stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the lands as he otherwise would have had.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 25.

Obstructing a Right of Way.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. He was entitled to a right of way from the [house] over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles, OR on foot] at all times of the year.

3. On the day of 19, defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, OR on foot, OR in any manner] along with the way [and has ever since wrongfully obstructed the same].

4. (STATE SPECIAL DAMAGE, IF ANY.)

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 26.

Obstructing a Highway.

(Title.)

1. The defendnt wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. Thereby the plaintiff, while lawfully passing along the said high way, fell over the said earth and stones [OR into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 27.

Diverting a Water Course.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is, and at the time hereinafter men-

tioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of .

2. By reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. On the day of 19 , the defendant, by cutting the bank of the stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. By reason thereof the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 28.

OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. On the day of 19 , the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

No. 29.

INJURIES CAUSED BY NEGLIGENCE ON A RAILROAD.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendants were common carriers of passengers by railway between and .

2. On that day the plaintiff was passenger in one of the carriages of the defendants on the said railway.

3. While he was such passenger, at [OR near the station of OR between the stations of and], a collision occurred on the said railway caused by the negligence and unskilfulness of the defendant's servants, whereby the plaintiff was much injured [having his leg broken, his head cut, etc., AND STATE THE SPECIAL DAMAGE, IF ANY, AS], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

[OR THUS:—2. On that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, etc., AS IN PARA. 3.]

No. 30.

INJURIES CAUSED BY NEGLIGENT DRIVING.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is a shoemaker, carrying on business at . The defendant is a merchant of .

2. On the day of 19 , the plaintiff was walking southward along Chowringhee, in the City of Calcutta, at about 3 o'clook in the afternoon. He was obliged to cross Middleton Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses under the charge and control of the defendant's servants was negligently, suddenly and without any warning turned at a rapid and dangerous pace out of Middleton Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and un-

able to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 31.

FOR MALICIOUS PROSECUTION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant obtained a warrant of arrest from [a Magistrate of the said city, OR AS THE CASE MAY BE] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days, OR hours, and gave bail in the sum of rupees to obtain his release.]

2. In so doing the defendant acted maliciously and without reasonable or probable cause.

3. On the day of 19 , the Magistrate dismissed the complaint of the defendant and acquitted the plaintiff.

4. Many persons, whose names are unknown to the plaintiff, hearing of the arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him: OR in consequence of the said arrest, the plaintiff lost his situation as clerk to one E. F.; OR in consequence the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1, AND RELIEF CLAIMED.]

NO. 32.

MOVEABLES WRONGFULLY DETAINED.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , plaintiff owned [OR STATE FACTS SHOWING A RIGHT TO THE POSSES-

SION] the goods mentioned in the schedule hereto annexed [OR DESCRIBE THE GOODS], the estimated value of which is rupees.

2. From that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. Before the commencement of the suit, to wit, on the day of 19 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

The Schedule.

No. 33.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities.]

2. The plaintiff was hereby induced to sell and deliver to C. D. [one hundred boxes of tea], the estimated value of which is rupees.

3. The said representations were false, and were then known by C. D. to be so [OR at the time of making the said representations, C. D. was insolvent, and knew himself to be so].

4. C. D. afterwards transferred the said goods to the defendant E. F. without consideration [OR who had notice of the falsity of the representation].

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

7. The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

No. 34.

RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained (ten bighas).

2. The plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an agreement, of which the original is herto annexed. But the land has not been transferred to him.

3. On the day of 19 , the plaintiff paid the defendant rupees as part to the purchase-money.

4. That the said piece of ground contained in fact only (five bighas).

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

7. The plaintiff claims—

(1) rupees, with interest from the day of 19 ;

(2) that the said agreement be delivered up and cancelled.

No. 35.

AN INJUNCTION RESTRAINING WASTE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is the absolute owner of (DESCRIBE THE PROPERTY).

2. The defendant is in possession of the same under a lease from the plaint ff.

3. The defendant has (cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale) without the consent of the plaintiff.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[PECUNIARY COMPENSATION MAY ALSO BE CLAIMED.]

No. 36.

INJUNCTION RESTRAINING NUISANCE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of (the house No. Street, Calcutta).

2. The defendant is, and at all the said times was, the absolute owner of (a plot of ground in the same street).

3. On the day of 19 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there (and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff).

[4. In consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same.]

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

No. 37.

PUBLIC NUISANCE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The defendant has wrongly heaped up earth and stones on a public road known as Street at so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to

continue and repeat the said wrongful act.

2. The plaintiff has obtained the consent in writing of the Governor to the institution of this suit.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

5. The plaintiff claims—

(1) a declaration that the defendant is not entitled to obstruct the passage of the public along the said public road:

(2) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

No. 38.

INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

[AS IN FORM NO. 27.]

The plaintiff claims that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 39.

RESTORATION OF MOVEABLE PROPERTY THREATENED WITH DESTRUCTION, AND FOR AN INJUNCTION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. Plaintiff is, and at all times hereinafter mentioned was, the owner of (a portrait of his grand-father which was executed by an eminent painter), and of which no duplicate exists (OR STATE ANY FACTS SHOWING THAT THE PROPERTY IS OF A KIND THAT CANNOT BE REPLACED BY MONEY).

2. On the day of 19 , he deposited the same for safe-keeping with the defendant.

3. On the day of 19 , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. The defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the (painting).

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

8. The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said (painting);

(2) that he be compelled to deliver the same to the plaintiff.

No. 40.

INTERPLEADER.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. Before the date of the claims hereinafter mentioned G. H. deposited with the plaintiff (DESCRIBE THE PROPERTY) for (safe-keeping).

2. The defendant C. D. claims the same (under an alleged assignment thereof to him from G. H.).

3. The defendant E. F. also claims the same (under an order of G. H. transferring the same to him).

4. The plaintiff is ignorant of the respective rights of the defendants.

5. He has no claim upon the said property other than for charges and costs, and is ready and willing to deliver it to such persons as the Court shall direct.

6. The suit is not brought by collusion with either of the defendants.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

9. The plaintiff claims—

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorised to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person] the plaintiff be discharged from all liability to either of the defendants in relation thereto.

No. 41.

ADMINISTRATION BY CREDITOR ON BEHALF OF HIMSELF AND ALL OTHER CREDITORS.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. E. F., late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of

[HERE INSERT NATURE OF DEBT AND SECURITY, IF ANY.]

2. E. F., died on or about the day of . By his last will, dated the day of he appointed C. D. his executor [OR devised his estate in trust, etc., OR died intestate, AS THE CASE MAY BE].

3. The will was proved by C. D. [OR letters of administration were granted, etc.].

4. The defendant has possessed himself of the moveable and immoveable, [OR the proceeds of the immoveable] property of E. F. and has not paid the plaintiff his debt.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

7. The plaintiff claims that an account may be taken of the moveable [and immoveable] property of E. F., deceased, and that the same may be administered under the decree of the Court.

No. 42.

ADMINISTRATION BY SPECIFIC LEGATEE.

(TITLE.)

[ALTER FORM NO. 41 THUS]—

[OMIT PARAGRAPH 1 AND COMMENCE PARAGRAPH 2] E.F., late of , died on or about the day of . By his last will, dated the day of

he appointed C. D. his executor, and bequeathed to the plaintiff [HERE STATE THE SPECIFIC LEGACY].

FOR PARAGRAPH 4 SUBSTITUTE—

The defendant is in possession of the moveable property of E. F., and, amongst other things, of the said [HERE NAME THE SUBJECT OF THE SPECIFIC BEQUEST].

FOR THE COMMENCEMENT OF PARAGRAPH 7 SUBSTITUTE—

The plaintiff claims that the defendant may be ordered to deliver to him the said [HERE NAME THE SUBJECT OF THE SPECIFIC BEQUEST], OR that, etc.

No. 43.

ADMINISTRATION BY PECUNIARY LEGATEE.

(TITLE).

[ALTER FORM NO. 41 THUS]—

[OMIT PARAGRAPH 1 AND SUBSTITUTE FOR PARAGRAPH 2]

E. F., late of , died on or about the day of . By his last will, dated the day of he appointed C. D. his executor, and bequeathed to the plaintiff a legacy of rupees.

IN PARAGRAPH 4 SUBSTITUTE "legacy" FOR "debt".

ANOTHER FORM.

(TITLE.)

E. F., the above-named plaintiff, states as follows:—

1. A. B. of K. in the died on the day of . By his last will, dated the day of , he appointed the defendant and M. N. [who died in the testator's lifetime] his executors, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who

would be the testators next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure, of his issue as aforesaid.

2. The will was proved by the defendant on the day of . The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff claims—

(1) to have the moveable and immoveable property of A. B. administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

NO. 44.

EXECUTION OF TRUST.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. He is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of E. F. and G. H., the father and mother of the defendant [OR an instrument of transfer of the estate and effects of E. F. for the benefit of C. D., the defendant, and the other creditors of E. F.]

2. A. B. has taken upon himself the burden of the said trust, and is in possession of [OR of the proceeds of] the moveable and immoveable property transferred by the said instrument.

3. C. D. claims to be entitled to a beneficial interest under the instrument.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, OR of part of the said immoveable pro-

perty, OR moveable, OR the proceeds of the sale of, OR of part of, the said moveable property, OR the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the Court for the benefit of C. D., the defendant, and all other persons who may be interested in such administration, in the presence of C. D. and such other persons so interested as the Court may direct, or that C. D. may show good cause to the contrary.

[N. B.—WHERE THE SUIT IS BY A BENEFICIARY, THE PLAINT MAY BE MODELLED, *mutatis mutandis*, ON THE PLAINT BY A LEGATEE.]

No. 45.

FORECLOSURE OR SALE.

(TITLE.)

A. B., the above-named plaintiff states as follows:—

1. The plaintiff is mortgagee of lands belonging to the defendant.

2. The following are the particulars of the mortgage:—

(a) (date);
(b) (names of mortgagor and mortgagee);
(c) (sum secured);
(d) (rate of interest);
(e) (property subject to mortgage);
(f) (amount now due);
(g) (IF THE PLAINTIFF'S TITLE IS DERIVATIVE STATE SHORTLY THE TRANSFERS OR DEVOLUTION UNDER WHICH HE CLAIMS).

[IF THE PLAINTIFF IS MORTGAGEE IN POSSESSION, ADD].

3. The plaintiff took possession of the mortgaged property on the day of and is ready to account as mortgagee in possession from that time].

[AS IN PARAS. 4 & 5 OF FORM NO. 1.]

6. The plaintiff claims—

(1) payment, or in default [sale OR] foreclosure [and possession];

[WHERE ORDER 34, RULE 6, APPLIES.]

(2) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

No. 46.

REDEMPTION.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. The following are the particulars of the mortgage:—

(a) (date);

(b) (names of mortgagor and mortgagee);

(c) (sum secured);

(d) (rate of interest);

(e) (property subject to mortgage);

(f) (IF THE PLAINTIFF'S TITLE IS DERIVATIVE, STATE SHORTLY THE TRANSFERS OR DEVOLUTION UNDER WHICH HE CLAIMS).

(IF THE DEFENDANT IS MORTGAGEE IN POSSESSION, ADD)

3. The defendant has taken possession [OR has received the rents] of the mortgaged property.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff claims to redeem the said property and to have the same reconveyed to him and to have possession thereof].

No. 47.

SPECIFIC PERFORMANCE (NO. 1).

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. By an agreement dated the day of and signed by the defendant, he contracted to buy of [OR sell to] the plaintiff certain immoveable property there-

in described and referred to, for the sum of rupees.

2. The plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. The plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

6. The plaintiff claims that the Court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [OR to accept a transfer and possession of the said property] and to pay the costs of the suit.

No. 48.

SPECIFIC PERFORMANCE (NO. 2.).

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. On the day of 19 , the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

The defendant was absolutely entitled to the immoveable property described in the agreement.

2. On the day of 19 , the plaintiff tendered rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

3. On the day of 19 , the plaintiff again demanded such transfer. [OR the defendant refused to transfer the same to the plaintiff.]

4. The defendant has not executed any instrument of transfer.

5. The plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

8. The plaintiff claims—

(1) that the defendant transfers the said property to the plaintiff by a sufficient instrument [FOLLOWING THE TERMS OF THE AGREEMENT];

(2) rupees compensation for withholding the same.

No. 49.

PARTNERSHIP.

(TITLE.)

A. B., the above-named plaintiff, states as follows:—

1. He and C. D., the defendant, have been for year [OR months] past carrying on business together under articles of partnership in writing [OR under a deed, OR under a verbal agreement].

2. Several disputes and differences have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners. [OR the defendant has committed the following breaches of the partnership articles:—

(1)
(2)
(3)]

[AS IN PARAS. 4 AND 5 OF FORM NO. 1.]

5. The plaintiff claims—

(1) dissolution of the partnership;
(2) that accounts be taken;
(3) that a receiver be appointed.

N. B.—IN SUITS FOR THE WINDING-UP OF ANY PARTNERSHIP, OMIT THE CLAIM FOR DISSOLUTION; AND INSTEAD INSERT A PARAGRAPH STATING THE FACTS OF THE PARTNERSHIP HAVING BEEN DISSOLVED.)

---

(4) WRITTEN STATEMENTS.

General defences.

Denial. The defendant denies that (SET OUT FACTS).

The defendant does not admit that (SET OUT FACTS).

The defendant admits that but says that .

Protest. The defendant denies that he is a partner in the defendant firm of .

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation. The suit is barred by article or article of the second schedule to the Indian Limitation Act, 1877. (XV of 1877).

Jurisdiction. The Court has no jurisdiction to hear the suit on the ground that (SET FORTH THE GROUNDS).

On the day of a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency. The defendant has been adjudged an insolvent.

The plaintiff before the institution of the suit was adjudged an insolvent and the right to sue vested in the receiver.

Minority. The defendant was a minor at the time of making the alleged contract.

Payment into Court The defendant as to the whole claim (OR as to Rs. part of the money claimed, OR AS THE CASE MAY BE) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim (OR the part aforesaid).

Performance remitted. The performance of the promise alleged was remitted on the (DATE).

Rescission. The contract was rescinded by agreement between the plaintiff and defendant.

Res judicata. The plaintiff's claim is barred by the decree in suit (GIVE THE REFERENCE).

Estoppel. The plaintiff is estopped from denying the truth of (INSERT STATEMENT AS TO WHICH ESTOPPEL IS CLAIMED) because (HERE STATE THE FACTS RELIED ON AS CREATING THE ESTOPPEL).

Ground of defence subsequent to institution of suit. Since the institution of the suit, that is to say, on the day of (SET OUT FACTS).

No. 1.

DEFENCE IN SUITS FOR GOODS SOLD AND DELIVERED.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.

3. The price was not Rs.

[OR]

4. } Except as to Rs. , same as { 1.
5. } { 2.
6. } { 3.

7. The defendant [OR A. B., the defendant's agent] satisfied the claim by payment before suit to the plaintiff OR to C. D., the plaintiff's agent] on the day of 19 .

8. The defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 .

No. 2.

DEFENCE IN SUITS ON BONDS.

1. The bond is not the defendant's bond.

2. The defendant made payment to the plaintiff on the day according to the condition of the bond.

3. The defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

No. 3.

DEFENCE IN SUITS ON GUARANTEES.

1. The principal satisfied the claim by payment before suit.

2. The defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

No. 4.

DEFENCE IN ANY SUIT FOR DEBT.

1. As to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows:—

		Rs.
1907, January, 25th	..	.. 150
„ February, 1st	..	.. 50
	Total	.. 200 .

2. As to the whole [OR as to Rs. , part of the money claimed] the defendant made tender before suit of Rs.
and has paid the same into Court.

No. 5.

DEFENCE IN SUITS FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to
of Street, Calcutta, livery stable keepers employed by the the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said .

2. The defendant does not admit that the said carriage was turned out of Middleton Street either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. The defendant says the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements contained in the third paragraph of the plaint.

No. 6.

DEFENCE IN ALL SUITS FOR WRONGS.

1. Denial of the several acts [OR matters] complained of.

No. 7.

DEFENCE IN SUITS FOR DETENTION OF GOODS.

1. The goods were not the property of the plaintiff.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1907, May 3rd. To carriage of the goods claimed from Delhi to Calcutta:—

45 maunds at Rs. 2 per maund .. .. Rs. 90

No. 8.

DEFENCE IN SUITS FOR INFRINGEMENT OF COPYRIGHT.

1. The plaintiff is not the author [ASSIGNEE, ETC.]
2. The book was not registered.
3. The defendant did not infringe.

No. 9.

DEFENCE IN SUITS FOR INFRINGEMENT OF TRADE MARK.

1. The trade mark is not the plaintiff's.
2. The alleged trade mark is not a trade mark.
3. The defendant did not infringe.

No. 10.

DEFENCE IN SUITS RELATING TO NUISANCES.

1. The plaintiff's lights are not ancient [OR deny his other alleged prescriptive rights].

2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [OR do what is complained of].

[IF THE DEFENDANT CLAIMS THE RIGHT BY PRESCRIPTION OR OTHERWISE TO DO WHAT IS COMPLAINED OF, HE MUST SAY SO, AND MUST STATE THE GROUNDS OF THE CLAIM, *i. e.*, WHETHER BY PRESCRIPTION, GRANT OR WHAT.]

4. The plaintiff has been guilty of laches of which the following are particulars:—

1870. Plaintiff's mill began to work.
1871. Plaintiff came into possession.
1883. First complaint.

5. As to the plaintiff's claim for damages the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [IF OTHER GROUNDS ARE RELIED ON, THEY MUST BE STATED, *e. g.*, LIMITATION AS TO PAST DAMAGE.]

No. 11.

DEFENCE TO SUIT FOR FORECLOSURE.

1. The defendant did not execute the mortgage.
2. The mortgage was not transferred to the plaintiff

(IF MORE THAN ONE TRANSFER IS ALLEGED, SAY WHICH IS DENIED).

3. The suit is barred by article of the second schedule to the Limitation Act 1977.

4. The following payments have been made, *viz*:—

		Rs.
(INSERT DATE)	.. ..	1,000
(INSERT DATE.)	.. ..	500

5. The plaintiff took possession on the of , and has received the rents ever since.

6. That plaintiff released the debt on the of .

7. The defendant transferred all his interest to A. B. by a document, dated .

No. 12.

DEFENCE TO SUIT FOR REDEMPTION.

1. The plaintiff's right to redeem is barred by article of the second schedule to the Limitation Act 1977.

2. The plaintiff transferred all interest in the property to A. B.

3. The defendant, by a document dated the day of transferred all his interest in the mortgage-debt and property comprised in the mortgage to A.B.

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

(IF THE DEFENDANT ADMITS POSSESSION FOR A TIME ONLY, HE SHOULD STATE THE TIME, AND DENY POSSESSION BEYOND WHAT HE ADMITS.)

No. 13.

DEFENCE TO SUIT FOR SPECIFIC PERFORMANCE.

1. The defendant did not enter into the agreement.

2. A. B. was not the agent of the defendant (IF ALLEGED BY PLAINTIFF).

3. The plaintiff has not performed the following conditions—(CONDITIONS).

4. The defendant did not—(ALLEGED ACTS OF PART PERFORMANCE).

5. The plaintiff's title to the property agreed to be sold

is not such as the defendant is bound to accept by reason of the following matter—(STATE WHY).

6. The argreement is uncertain in the following respects —(STATE THEM).

7. (OR) The plaintiff has been guilty of delay.

8. (OR) The plaintiff has been guilty of fraud (OR misrepresentation).

9. (OR) The agreement is unfair.

10. (OR) The agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) (OR AS THE CASE MAY BE).

12. The agreement was rescinded under Conditions of Sale, No. 11 (OR) by mutual agreement.

(IN CASES WHERE DAMAGES ARE CLAIMED AND THE DEFENDANT DISPUTS HIS LIABILITY TO DAMAGES, HE MUST DENY THE AGREEMENT OR THE ALLEGD BREACHES, OR SHOW WHATEVER OTHER GROUND OF DEFENCE HE INTENDS TO RELY ON, *e. g.*, THE LIMITATION ACT, ACCORD AND SATISFACTION, RELEASE, FRAUD, ETC.).

No. 14.

DEFENCE IN ADMINISTRATION SUIT BY PECUNIARY LEGATEE.

1. A. B.'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold and which produced the net sum of Rs. and the testator had some moveable property which the defendant got in, and which produced the net sum of Rs.

2. The defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 15.

PROBATE OF WILL IN SOLEMN FORM.

1. The said will and codicil of the deceased were not duly executed.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud so far as is within the defendant's present knowledge, being [SATE THE NATURE OF THE FRAUD].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof [OR of the contents of the residuary clause in the said will, AS THE CASE MAY BE].

6. The deceased made his true last will, dated the 1st January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims—

(1) that the Court will pronounce against the said will and codicil propounded by the plaintiff:

(2) that the Court will decree probate of the will of the deceased, dated the 1st January, 1873, in solemn form of law.

No. 16.

PARTICULARS. (O. 6, r. 5.)

(TITLE OF SUIT.)

The following are the particulars of (HERE STATE THE MATTERS IN RESPECT OF WHICH PARTICULARS HAVE BEEN ORDERED) delivered pursuant to the order of the of .

Particulars.

(HERE SET OUT THE PARTICULARS ORDERED IN PARAGRAPHS IF NECESSARY.)

APPENDIX B.

PROCESS.

No. 1.

SUMMONS FOR DISPOSAL OF SUIT (O. 5, rr. 1, 5.)

(TITLE.)

To

[NAME, DESCRIPTION AND PLACE OF RESIDENCE.]

WHEREAS has instituted a suit against you for you are hereby summoned to appear in this Court in person or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 , at o'clock in the noon, to answer the claim; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce on that day all the witnesses upon whose evidence and all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree,

which may be against your person or property, or both.

No. 2.

SUMMONS FOR SETTLEMENT OF ISSUES. (O. 5, rr. 1, 5.)

(TITLE.)

To

[NAME AND DESCRIPTION AND PLACE OF RESIDENCE.]

WHEREAS
has instituted a suit against you for
you are hereby summoned to appear in this Court in person, or by a pleader duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some person able to answer all such questions, on the day of 19 ,at o'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have a summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the witness to produce, on applying to the Court and on depositing the necessary expenses.

2. If you admit the claim, you should pay the money into Court together with the costs of the suit, to avoid execution of the decree, which may be against your person or property, or both.

No. 3.

SUMMONS TO APPEAR IN PERSON. (O. 5, r. 3.)

(TITLE.)

To

[NAME, DESCRIPTION AND PLACE OF RESIDENCE.]

WHEREAS
has instituted a suit against you for
you are hereby summoned to appear in this Court in person on the day of 19 , at o'clock in the noon, to answer the claim; and you are directed to produce on that day all the documents upon which you intend to rely in support of your defence.

Take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

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[1]No. 4.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT. (O. 37, r. 2.)

(TITLE.)

(NAME, DEXCRIPTION AND PLACE OF RESIDENCE.)

WHEREAS has instituted a suit against you under Order XXXVII of the Code of Civil Procedure, 1977, for Rs. , balance of principal and interest due to him as the of a of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. and the sum of Rs. for the costs [2][together with such interest, if any, from the date of the institution of the suit as the Court may order].

[1]Form No. 4 inserted *vide* Notification 3-L/85 published in Government Gazette, dated 8th Bhadon 1985.

[2]Added *vide* Act 14 of 1938 published in Government Gazette, dated 12th Chet 1982.

Leave to appear may be obtained on an application to the Court suported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

Given under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 5.

NOTICE TO PERSON WHO, THE COURT CONSIDERS, SHOULD BE ADDED AS CO-PLAINTIFF. (O. I, r. 10.)

(TITLE.)

To

[NAME, DESCRIPTION AND PLACE OF RESIDENCE.]

WHEREAS has instituted the above suit against for and where as it appears necessary that you should be added as a plaintiff in the said suit in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved:

Take notice that you should on or before the day of 19 , signify to this Court whether you consent to be so added.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 6.

SUMMONS TO LEGAL REPRESENTATIVE OF A DECEASED DEFENDANT. (O. 22, r. 4.)

(TITLE.)

To

WHEREAS the plaintiff instituted a suit in this Court on the day of 19 , against the defendant who has since deceased, and whereas the said plaintiff has made an application to this Court alleging that you are the legal representative of the said , deceased, and desiring that you be made the defendant in his stead:

You are hereby summoned to attend in this Court on the day of 19 at A.M. to defend the said suit and, in default of your appearance on the day specified, the said suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court this day of 19 .

JUDGE.

No. 7.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT. (O. 5, r. 21.)

(TITLE.)

WHEREAS it is stated that defendant/witness in the above suit is at present residing in : It is ordered that a summons returnable on the day of 19 , be forwarded to the Court of for service on the said defendant/witness with a duplicate of this proceeding.

The court-fee of chargeable in respect to the summons has been realised in this Court in stamps dated 19 .

JUDGE.

No. 8.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PRISONER. (O. 5, r. 24.)

(TITLE.)

To

The Superintendent of the Jail at .

Under the provision of Order V, rule 24, of the Code of Civil Procedure, 1977, a summons in duplicate is herewith forwarded for service on the defendant who is a prisoner in jail. You are requested to cause a copy of the said summons to be served upon the said defendant, and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

JUDGE.

No. 9.

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED ON A PUBLIC SERVANT OR SOLDIER. (O. 5, rr. 27, 28.)

(TITLE.)

To

Under the provisions of Order V, rule 27 (OR 28, AS THE CASE MAY BE), of the Code of Civil Procedure, 1977, a summons in duplicate is herewith forwarded for service on the defendant who is stated to be serving under you. You are requested to cause a copy of the said summons to be served upon the said defendant and to return the original to this Court signed by the said defendant, with a statement of service endorsed thereon by you.

JUDGE.

No. 10.

TO ACCOMPANY RETURNS OF SUMMONS OF ANOTHER COURT (O. 5, r. 23.)

(TITLE.)

Read proceeding from the forwarding for service on in suit No. of 19 of that Court.

Read Serving Officer's endorsement stating that the and proof of the above having been duly taken by me on the oath of and it is ordered that the be returned to the with a copy of this proceeding.

JUDGE.

NOTE.—This form will be applicable to process other than summons the service of which may have to be effected in the same manner.

No. 11.

Affidavit of Process-server to Accompany return of a Summons or Notice. (O. 5, r. 18.)

(Title.)

The Affidavit of son of
I make oath/affirm and say as follows:—

(1) I am a process-server of this Court.

(2) On the day of 19 , I received a summons/notice issued by the Court of in Suit No. of 19 , in the said Court, dated the day of 19 for service on

(3) The said was at the time personally known to me, and I served the said summons/notice on him/her on the day of 19 at about o'clock in the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(*a*)
(*b*)

(*a*) Here state whether the person served signed or refused to sign the process, and in whose presence.

(*b*) Signature of process-server.

or,

(3) The said not being personally known to me accompanied me to and pointed out to me a person whom he stated to be the said , and I served the said summons/notice on him/her on the day of 19 , at about o'clock in the noon at by tendering a copy thereof to him/her and requiring his/her signature to the original summons/notice.

(*a*)
(*b*)

(*a*) Here state whether the person served signed or refused to sign the process and in whose presence.

(*b*) Signature of process-server.

or,

(3) The said, and the house in which he ordinarily resides being personally known to me, I went to the said house, in and there on the day of 19 , at about o'clock in the noon, I did not find the said .

(*a*)

(*b*)

(*a*) Enter fully and exactly the manner in which the process was served, with epecial refernece to Order 5, rules 15 and 17.

(*b*) Signature of process-server.

or,

(3) One accompanied me to and there pointed out to me which he said was the house in which ordinarily resides. I did not find the said there.

(*a*)

(*b*)

(*a*) Enter fully and exactly the manner in which the process was served, with special reference to Order 5, rules 15 and 17.

(*b*) Signature of process-server.

or,

If substituted service has been ordered, state fully and exactly the manner in which the summons was served with special reference to the terms of the order for substituted service.

Sworn/Affirmed by the said before me this day of 19 .

EMPOWERED UNDER SECTION 139 OF THE CODE OF CIVIL PROCEDURE, 1977, TO ADMINISTER OATH TO DEPONENTS.

No. 12.

NOTICE TO DEFENDANT. (O. 9, r. 6.)

(TITLE.)

To

(NAME, DESCRIPTION AND PLACE OF RESIDENCE.)

WHEREAS this day was fixed for the hearing of the above suit and a summons was issued to you and the plaintiff has appeared in this Court and you did not so appear, but from

the return of the Nazir it has been proved to the satisfaction of the Court that the said summons was served on you but not in sufficient time to enable you to appear and answer on the day fixed in the said summons.

Notice is hereby given to you that the hearing of the suit is adjourned this day and that the day of 19 is now fixed for the hearing of the same, in default of your appearance on the day last mentioned the suit will be heard and determined in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 13.

SUMMONS TO WITNESS. (O. 16, rr. 1, 5.)

(TITLE.)

To

WHEREAS your attendance is required to on behalf of the in the above suit, you are hereby required [personally] to appear before this Court on the day of 19 , at o'clock in the forenoon, and to bring with you [OR to send to this Court].

A sum of Rs. , being your travelling and other expenses and subsistence allowance for one day, is herewith sent. If you fail to comply with this order without lawful excuse, you will be subject to the consequences of non-attendance laid down in rule 12 of Order XVI of the Code of Civil Procedure, 1977.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NOTICE.—(1) If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2) If you are detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

No. 14.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.
(O. 16, r. 10.)

(TITLE.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons could not be served upon the witness in the manner prescribed by law: and whereas it appears that the evidence of the witness is material, and he absconds and keeps out of the way for the purpose of evading the service of the summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1977, issued requiring the attendance of the witnsess in this Court on the day of 19 at o'clock in the forenoon and from day to day until he shall have leave to depart: and if the witnsess fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 15.

PROCLAMATION REQUIRING ATTENDANCE OF WITNESS.
(O. 16, r. 10.)

(TITLE.)

To

WHEREAS it appears from the examination on oath of the serving officer that the summons has been duly served upon the witness, and whereas it appears that the evidence of the witness is material and he has failed to attend in compliance with such summons: This proclamation is therefore, under rule 10 of Order XVI of the Code of Civil Procedure, 1977, issued, requiring the attendance of the witness in this Court on the day of 19 at o'clock in the forenoon, and from day to day until he shall have leave to depart; and if the witness fails to attend on the day and hour aforesaid he will be dealt with according to law.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 16.

WARRANT OF ATTACHMENT OF PROPERTY OF WITNESS.
(O. 16, r. 10.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS the witness
cited by
has not, after the expiration of the period limited in the proclamation issued for his attendance, appeared in Court; You are hereby directed to hold under attachment property belonging to the said witness to the value of and to submit a return, accompanied with an inventory thereof, within days

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 17.

WARRANT OF ARREST OF WITNESS. (O. 16, r. 10.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS has been duly served with a summons but has failed to attend [absconds and keeps out of the way for the purpose of avoiding service of a summons]; You are hereby ordered to arrest and bring the said before the Court.

You are further ordered to return this warrant on or before the day of 19 with an endorsement certifying the day on and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 18.

WARRANT OF COMMITTAL. (O. 16, r. 16.)

(TITLE.)

To

The Officer in charge of the Jail at

WHEREAS the plaintiff (OR defendant) in the above-named suit has made application to this Court that security be taken for the appearance of to give evidence (OR to produce a document), on the day of 19 ; and whereas the Court has called upon the said to furnish such security, which he had failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the said day and on such other day or days as may be hereafter ordered.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 19.

WARRANT OF COMMITTAL. (O. 16, r. 18.)

(TITLE.)

To]

The Officer in charge of the Jail at

WHEREAS , whose attendance is required before this Court in the above-named case to give evidence (OR to produce a document), has been arrested and brought before the Court in custody; and whereas owing to the absence of the plaintiff (OR defendant), the said cannot give such evidence (OR produce such document); and whereas the Court has called upon the said to give security for his appearance on the day of 19 , at which he has failed to do; This is to require you to receive the said into your custody in the civil prison and to produce him before this Court at on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

APPENDIX C.

DISCOVERY, INSPECTION AND ADMISSION..

No. 1.

ORDER FOR DELIVERY OF INTERROGATORIES. (O. II, r. 1.)

In the Court of
Civil Suit No. of 19 .

A. B. .. .. .. PLAINTIFF.

AGAINST

C. D., E. F. and G. H. .. DEFENDANTS.

Upon hearing and upon reading the affidavit of filed the day of 19 ; It is ordered that the be at liberty to deliver to the interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XI, rule 8, and that the cost of this application be

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No. 2.

INTERROGATORIES. (O. II, r. 4.)

(TITLE AS IN No. 1, *supra*.)

Interrogatories on behalf of the above-named [PLAINTIFF OR DEFENDANT C.D.] for the examination of the above-named [DEFENDANTS E. F. and G. H. OR PLAINTIFF].

1. Did not, etc.
2. Has not, etc.

etc., etc., etc.

[The defendant E. F. is required to answer the interrogatories numbered .]

[The dependant G. H. is required to answer the interrogatories numbered .]

No. 3.

ANSWER TO INTERROGATORIES. (O. 11, r. 9.)

(TITLE AS IN No. 1, *supra*.)

The answer of the above-named defendant E. F. to the interrogatories for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F., make oath and say as follows:—

1. } Enter answers to interrogatories in paragraphs
2. } numbered consecutively.

3. I object to answer the interrogatories numbered on the ground that [STATE GROUNDS OF OBJECTION].

No. 4.

ORDER FOR AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 12.)

(TITLE AS IN No. 1, *supra*.)

Upon hearing

It is ordered that the do within days from the date of this order, answer on affidavit stating which documents are or have been in his possession or power relating to the matter in question in this suit, and that the costs of this application be .

No. 5.

AFFIDAVIT AS TO DOCUMENTS. (O. 11, r. 13.)

(TITLE AS IN No. 1, *supra*.)

I, the above-named defendant C. D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the first schedule hereto [STATE GROUNDS OF OBJECTION].

3. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

4. The last-mentioned documents were last in my possession or power on [STATE WHEN AND WHAT HAS BECOME OF THEM, AND IN WHOSE POSSESSION THEY NOW ARE].

5. According to the best of my knowledge, information and belief I have not now, and never had, in my possession, custody or power, or in the possession, custody or power of my pleader or agent, or in the possession, custody or power of any other person on my behalf, any account, book of account, voucher, receipt, letter, memorandum paper or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit or any of them or wherein any entry has been made relative to such matters or any of them, other than and except the documents set forth in the said first and second schedules hereto.

No. 6.

ORDER TO PRODUCE DOCUMENTS FOR INSPECTION. (O. 11, r. 14.)

(TITLE AS IN NO. 1, *supra*.)

Upon hearing and upon reading the affidavit of filed the day of 19 ;
It is ordered that the do, at all reasonable times on reasonable notice, produce at situate at the following documents, namely , and that the be at liberty to inspect and peruse the documents so produced, and to make notice, of their contents. In the meantime it is ordered that, all further proceedings be stayed and that the costs of this application be

---

No. 7.

NOTICE TO PRODUCE DOCUMENTS. (O. 11, r. 16.)

(TITLE AS IN NO. 1, *supra*.)

Take notice that the [PLAINTIFF OR DEFENDANT] requires you to produce for his inspection the following documents

referred to in your [plaint or written statement or affidavit dated the day of 19].

[DESCRIBE DOCUMENTS REQUIRED.]

X. Y., Pleader for the

To Z. Pleader for the

No. 8.

NOTICE TO INSPECT DOCUMENTS. (O. 11, r. 17.)

(TITLE AS IN No. 1, *supra*.)

Take notice that you can inspect the documents mentioned in your notice of the day of 19 , [EXCEPT THE DOCUMENTS NUMBERED IN THAT NOTICE] AT [INSERT PLACE OF INSPECTION] on Thursday next, the instant, between the hours of 12 and 4 o'clock.

OR, that the [PLAINTIFF OR DEFENDANT] objects to giving you inspection of documents mentioned in your notice of the day of 19 , on the ground that [STATE THE GROUND]:—

No. 9.

NOTICE TO ADMIT DOCUMENTS. (O. 12, r. 3.)

(TITLE AS IN No. 1, *supra*.)

Take notice that the plaintiff (OR defendant) in this suit proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant (OR plaintiff) his pleader or agent, at on between the hours of ; and the defendant [OR plaintiff] is hereby required, within forty-eight hours from the last-mentioned hour to admit that such of the said documents as are specified to be originals were respectively written, signed or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent or delivered were so served, sent or delivered, respectively saving all just exceptions to the admissibility of all

such documents as evidence in this suit.

G. H., PLEADER [OR AGENT] FOR PLAINTIFF [or DEFENDANT].

To E. F., PLEADER [or AGENT] FOR DEFENDANT [or PLAINTIFF].

[Here describe the documents and specify as to each document whether it is original or a copy.]

No. 10.

Notice to admit Facts. (O. 12, r. 5).

(Title as in No. 1, *supra*.)

Take notice that the plaintiff [OR defendant] in this suit requires the defendant (OR plaintiff to admit, for the purposes of this suit only, the several facts respectively hereunder specified; and the defendant [OR plaintiff] is hereby required; within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this suit.

G. H., PLEADER [or AGENT] FOR PLAINTIFF [or DEFENDANT].
To E. F., PLEADER [or AGENT] FOR DEFENDANT [or PLAINTIFF].

The facts, the admission of which is required, are—

1. That M. died on the 1st January, 1890.
2. That he died intestate.
3. That N. was his only lawful son.
4. That O. died on the 1st April, 1896.
5. That O. was never married.

No. 11.

Admission of facts pursuant to Notice. [O. 12, r. 5.]

(Title as in No. 1, *supra*.)

The defendant [OR plaintiff] in this suit, for the purposes of this suit only, hereby admits the several facts respectively hereunder specified subject to the qualifications or limita-

tions, if any, hereunder specified, saving all just exceptions to the admissibility of any such facts, or any of them, as evidence in this suit:

Provided that this admission is made for the purposes of this suit only, and is not an admission to be used against the defendant [OR plaintiff] on any other occasion or by any one other than the plaintiff [OR defendant OR party requiring the admission].

E. F., PLEADER [OR AGENT] FOR DEFENDANT [OR PLAINTIFF].
To G. H., PLEADER [OR AGENT] FOR PLAINTIFF [OR DEFENDANT].

Facts admitted.	Qualifications or limitations, if any, subject to which they are admitted.
1. That M. died on the 1st January, 1890	1.
2. That he died intestate	2.
3. That N. was his lawful son	3. But not that he was his only lawful son.
4. That O. died	4. But not that he died on the 1st April, 1996.
5. That O. was never married	5.

No. 12.

NOTICE TO PRODUCE (GENERAL FORM). (O. 12, r. 8.)

(TITLE AS IN No. 1, *supra*.)

Take notice that you are hereby required to produce and show to the Court at the first hearing of this suit all books, papers, letters, copies of letters and other writings and documents in your custody, possession or power containing any entry, memorandum or minute relating to the matters in question in this suit, and particularly

G. H., PLEADER [OR AGENT] FOR PLAINTIFF [OR DEFENDANT].
To E. F., PLEADER [OR AGENT] FOR DEFENDANT [OR PLAINTIFF].

APPENDIX D.

DECREES.

No. 1.

DECREE IN ORIGINAL SUIT. (O. 20, rr. 6, 7.)

(TITLE.)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered and decreed that and that the sum of Rs. be paid by the to the on account of the costs of this suit, with interest thereon at the rate of per cent. per annum from this date to date of realization.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

COSTS OF SUIT.

Plaintiff.	Rs.	a.	p.	Defendant.	Rs.	a.	p.
1. Stamp for plaint				Stamp for power			
2 Do. for power				Do. for petition			
3. Do. for exhibits				Pleader's fee			
4. Pleader's fee on Rs.				Subsistence for witnesses			
5. Subsistence for witnesses				Service of process			
6. Commissioner's fee				Commissioner's fee			
7. Service of process							
Total				Total			

No. 2.

SIMPLE MONEY DECREE. (Section 34.)

(TITLE.)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered that the do pay to the the sum of Rs. with interest thereon at the rate of per cent. per annum from to the date of realization of the said sum and do also pay Rs. , the costs of this suit, with interests thereon at the rate of per cent. per annum from this date to the date of realization.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

COSTS OF SUIT.

Plaintiff.	Rs.	a.	p.	Defendant.	Rs.	a.	p.
1. Stamp for plaint				Stamp for power			
2 Do. for Power				Do. for petition			
3 Do. for exhibits				Pleader's fee			
4. Pleader's fee on Rs.				Subsistance for witnesses			
5. Subsistence for witnesses				Service of process			
6 Commissioner's fee				Commissoner's fee			
7. Service of process							
Total				Total			

[1]No. 3.

PRELIMINARY DECREE FOR FORECLOSURE.

(Order 34, rule 2.—Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgaged-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all con-

[1]Forms 3 to 11 of Appendix D substituted *vide* Act VII of 1996 published in Government Gazette dated 16th Bhadon 1996.

venient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs. for the costs of the suit awarded to the plaintiff;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 3-A.

PRELIMINARY DECREE FOR FORECLOSURE.

(Order 34, rule 2.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby, declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs. .

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court of the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant or to such person as he appoints, and the plaintiff shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the

plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 4.

FINAL DECREE FOR FORECLOSURE.

(Order 34, rule 3).

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any), dated the day of and the application of the plaintiff, dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage.

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all rights of redemption of and in the property in the aforesaid preliminary decree mentioned; [1][and (if the defendant be in possession of the said mortgaged property) that defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

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[1] Words not required to be deleted.

No. 5.

PRELIMINARY DECREE FOR SALE.

(Order 34, rule 4.—Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at 6 per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of and that upon such report

of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the plaintiff;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, reconvey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges, and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that if the money realised by such sale not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 5-A.

PRELIMINARY DECREE FOR SALE.

(Order 34, rule 4.—When the Court declares the amount due).

(TITLE.)

This suit coming on this day etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal the sum of Rs. for costs, charges and expenses (other than the cost of the suit) properly incurred by the plaintiff in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the plaintiff making in all the sum of Rs. .

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession

or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV, of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force, to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 6.

FINAL DECREE FOR SALE.

(Order 34, rule 5.)

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated day of and the application of the plaintiff, dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold, and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges, and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

No. 7.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED.

(Order 34, rule 7. Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all con-

venient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-A.

PRELIMINARY DECREE FOR REDEMPTION WHERE, ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.

(Order 34, rule 7. Where accounts are directed to be taken).

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money properly incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon (such interest to be computed at the rate agreed between the parties or, failing such rate, at the same rate as is paybale on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on

account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections, as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the

Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of the Order XXXIV, of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-B.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED.

(Order 34, rule 7. Where the Court declares the amount due).

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, this sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs. .

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which

time for payment may be extended by the Court the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that in default of payment as aforesaid the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-C.

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR SALE IS PASSED.

(Order 34, rule 7. Where the Court declares the amount due).

(TITLE.)

This suit coming on this day etc.; It is hereby declared that the amount due to the defendant on the mort-

gage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the cost of this suit awarded to the defendant making in all the sum of Rs. .

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time the payment may be extended by the Court the said sum of Rs. ;

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such

costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance, and that the parties are at liberty to apply to the Court from time to time as they may have occasion and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 7-D.

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR.

(Order 34, rule 8).

(TITLE.)

Upon reading the preliminary decree in this suit on the day of and further orders (if any) dated the day of and the application of the defendant, dated the day of for final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned [1][and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the

[1] Words not required to be deleted.

defendant quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

No. 7-E.

FINAL DECREE FOR SALE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR.

(Order 34, rule 8).

(TITLE.)

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any), dated the day of , and the application of the defendant, dated the day for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

No. 7-F.

FINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR REDEMPTION WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE.

(Order 34, rules 3, 5 and 8).

(TITLE.)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or , the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree, dated the day of ;
It is hereby ordered and decreed that:—

(i) the mortgagee do execute a deed of reconveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor [1][or, as the case may be, who has redeemed the property or an acknowledgment of the payment of the amount due in his favour;

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

And it is hereby further ordered and decreed that, upon the mortgagee executing the deed of reconveyance or acknowledgment in the manner aforesaid—

(i) the said sum of Rs. be paid out of Court to the mortgagee;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor [1][or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor [1][or other person making the payment], the said deed of reconveyance or the acknowledgment in the office of the Sub-Registrar of , and

(iii) [1][If the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid preliminary decree mentioned to the mortgagor [1][or such person as aforesaid who has made the payment].

[1]Words not required to be deleted.

No. 8.

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF THE MORTGAGED PROPERTY.

(Order 34, rule 6 and 8-A).

(TITLE.)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs. ;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:—

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realization of the said sum, and the costs of this application.

No. 9.

PRELIMINARY DECREE FOR FORECLOSURE OR SALE.

(Plaintiff.....1st Mortgagee,

versus

Defendant No. 1.....Mortgagor,
Defendant No. 2.....2nd Mortgagee).

(Order 34, rules 2 and 4).

(TITLE.)

The suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day

of is the sum of Rs. for principal, sum of the Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage security with interest thereon and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit).

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 [1][or (if there are several subsequent mortgagees) that the several parties hereinbefore entitled in the following order to the payment of the sums due to them respectively].

3. And it is hereby ordered and decreed as follows:—

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix or such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, reconvey or retransfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

[1]Words not required to be deleted.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

(i) [1][in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale] that the defendant jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or

(ii) [1][in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(*iii*) [1][in the case where a sale is ordered under clause 4 (*ii*) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of this suit and such costs, charges and expenses as may be payable under rule 10 together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977 and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or orther persons entitled to receive the same; and

(*iv*) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendand No. 2. the plaintiff and defendant No. 2 or both of them as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against

[1]Words not required to be deleted.

defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

(*a*) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the plaintiff might have done under clause 4 above)—

[1][(*i*) that defendant No 1 shall thenceforth stand absolutely debarred and fore-closed of and from all right to redeem the mortgaged property described in in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property ;] or

[1][(*ii*) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the martgaged property ;] and

(*b*) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further orderd and decreed [in the case where a sale is ordered under clause 5 above]—

(*i*) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount ; and that the balance. if any, shall then be app.ied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be

[1]Words not required to be deleted.

payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be paid by the befendant No. 1 or other persons entitled to receive the same; and

(*ii*) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of the plaintiff's mortgage or defendant No. 2's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant Ne. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

NO. 10.

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON SUBSEQUENT MORTGAGE.

(Plaintiff.....2nd Mortgagee,

versus

Defendant No. 1..... Mortgagor,
Defendant No. 2..... 1st Mortgagee).

(Order 34, rules 2, 4 and 7).

(TITLE.)

The suit coming on this day, etc. It is hereby declared that the amount due to defendant No. 2 on the mort-

gage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit).

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff [1][or if (there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively].

3. And it is hereby ordered and decreed as follows:—

(i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff and defendant No. 1 or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever has made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and also free from all liability what-

[1]Words not required to be deleted.

soever arising from the mortgage or this suit and shall, if so required, deliver upto the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declaration to be introduced, if defendant No. 1 pays the amount found or declared due to the plaintiff with such variations as may be necessary having regard to the nature of his mortgage).

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or for a final decree—

(i) [1][in the case of a mortgage by conditional sale or an anamolous mortgage where the only remedy provided for the mortgage-deed is foreclosure and not sale] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the defendant No. 2 quiet and peaceable possession of the said propery; or

(ii) [1][in the case of any other mortgage] that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in his possession or power the mortgaged property; and

(iii) [1][in the case where a sale is ordered under clause 4(ii) above] that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance if any, shall be applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them as the case may be, shall be at liberty (when

[1] Words not required to be deleted.

such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed—

(a) that if plaintiff pays into Court to the credit of this suit the amount adjudged due to the defendant No. 2, but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep the plaintiff's mortgage alive for his benefit and to apply for a final decree (in the same manner as the defendant No. 2, might have done under clause 4, above)—

[1][(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property]; or

[1](ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged propperty;

and (b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed [1][in the case where a sale is ordered under clause 5 above]—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance,

[1] Words not required to be deleted.

if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 11.

PRELIMINARY DECREE FOR SALE.

(Plaintiff.....Sub or derivative mortgagee.

versus

Defendant No. 1..... Mortgagor
Defendant No. 2.....Original Mortgagee).

(Order 34, rule 4).

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2 making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage).

2. And it is hereby ordered and decreed as follows:—

(i) that defendant No. 1 do pay into Court on or before the said day of or any later date up to which

time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2;

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount).

(ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2(i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or, to such person as he appoints, and defendant No. 2 shall, if so required re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

(iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2, the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall then be paid to defendant No. 2 and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc. [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendants Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale,

and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1977, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and, that if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder).

8. And it is hereby further ordered and decreed that the the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule.

DESCRIPTION OF THE MORTGAGED PROPERTY.

No. 12.

Decree for Rectification of Instrument.

(Title.)

It is hereby declared that the , dated the day of 19 , does not truly express the intention of the parties to such .

And it is decreed that the said be rectified by .

No. 13.

Decree to set aside a transfer in fraud of creditors.

(Title.)

It is hereby declared that the , dated the day of 19 , and made between and , is void as against the plaintiff and all other creditors, if any, of the defendant .

No. 14.

Injunction against Private Nuisance.

(Title.)

Let the defendant , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15.

Injunction against building higher than old level.

(Title.)

Let the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect

upon his premises in any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No. 16.

INJUNCTION RESTRAINING USE OF PRIVATE ROAD.

(TITLE.)

LET the defendant , his agents, servants and workmen, be perpetually restrained from using or permitting to be used any part of the lane at , the soil of which belongs to the plaintiff, as a carriageway for the passage of cars, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT.

(TITLE.)

IT is ordered that the following accounts and inquiries be taken and made; that is to say—

IN CREDITOR'S SUIT—

1. That an account be taken of what is due to the plaintiff and all other creditors of the deceased.

IN SUITS BY LEGATEES—

2. That an account be taken of the legacies given by the testator's will.

IN SUITS BY NEXT-OF-KIN—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin (OR one of the next-of-kin) of the intestate.

(After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be neces-

sary will follow, omitting the first formal words. The form is continued as in a creditor's suit.)

4. An account of the funeral and testamentry expenses.

5. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

6. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

7. And it is further ordered that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.

8. And that if the[1] shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

9. And that Mr. E. F. be receiver in the suit (OR proceeding) and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the[1] (and shall give security by bond for the due performance of his duties to the amount of rupees).

10. And it is further ordered that if the moveable property of the deceased be found insufficient for carrying out the objects of the suits, then the following further inquiries be made, and accounts taken, that is to say—

(a) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(b) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased or any part thereof;

(c) an account, so far as possible, of what is due to the several incumbrances, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

11. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.

12. And it is ordered that G. H. shall have the conduct of the sale of the immoveable property, and shall prepare the

[1]Here insert name of proper officer.

conditions and contracts of sale subject to the approval of the [1] and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

13. And it is further ordered that, for the purpose of the inquiries here nbefore directed the[1] shall advertise in the newspapers according to the practice of the Court, or shalll make such inquiries in any other way which shall appear to the[1] to give the most useful publicity to such inquiries.

14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of , and that the[1] do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

15. And, lastly, it is ordered that this suit (OR proceeding) stand adjourned for making final decree to the day of .

(Such part only of this decree is to be used as is applicable to the particular case.)

No. 18.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

(TITLE.)

1. IT is odered that the defendant do, on or before the day of , pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of the testator, and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of , amounting together to the sum of Rs.

2. Let the[1] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The cost of the plaintiff to Mr. ,

[1] Here insert name of proper officer.

his attorney (OR pleader) OR and the costs of the defendant to Mr. , his attorney (OR pleader).

(b) And (IF ANY DEBTS ARE DUE) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the[1] , together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 19.

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

(TITLE.)

1. IT is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the[1] , pay to the plaintiff the amount of what the[1] shall certify to be due for principal and interest;

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

No. 20.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

(TITLE.)

1. LET the[1] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount

[1]Here insert name of proper officer.

of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of E. F., the intestate, within one week after the taxation of the said costs by the said[1] , and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

(a) Let the defendant, within one week after the taxation of the said costs by the[1] as aforesaid, pay one-third share of the said residue to the plaintiffs A. B., and C. D., his wife, in her right as the sister and one of the next-of-kin of the said E. F., the intestate.

(b) Let the defendant retain for her own use one other third share of the said residue, as the mother and one of the next-of-kin of the said E. F., the intestate.

(c) And let the defendant, within one week after the taxation of the said cost by the[1] as aforesaid, pay the remaining one-third share of the said residue to G.H., as the brother and the other next-of-kin of the said E. F., the intestate.

No. 21.

Preliminary Decree in a Suit for Dissolution of Partnership and the taking of Partnership Accounts.

(Title.)

It is declared that the proportionate shares of the parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the Government Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and affects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

[1]Here insert name of proper officer.

1. An account of the credits, property and effects now belonging to the said partnership;

2. An account of the debts and liabilities of the said partnership;

3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the good will of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the[1] may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at Liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the [1] do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 22.

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNT.

(TITLE.)

It is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the certificate of the[1] amounting in the whole to Rs.

2. In payment of the costs of all parties in this suits amounting to Rs.

[THESE COSTS MUST BE ASCERTAINED BEFORE THE DECREE IS DRAWN UP.]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. ,

[1]Here insert name of proper officer.

being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[OR, And that the remainder of the said sum of Rs. be paid to the said plaintiff (OR defendant) in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant (OR plaintiff] do on or before the day of pay to the plaintiff [OR defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

NO. 23.

DECREE FOR RECOVERY OF LAND AND MESNE PROFITS.

(TITLE.)

It is hereby decreed as follows:—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

OR

2. That an inquiry be made as to the amount of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount of mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

APPENDIX E.

EXECUTION.

No. 1.

NOTICE TO SHOW CAUSE WHY A PAYMENT OR ADJUSTMENT SHOULD NOT BE RECORDED AS CERTIFIED.

(O. 21, r. 2.)

(TITLE.)

To

WHEREAS in execution of the decree in the above-named suit has applied to this Court that the sum of Rs. recoverable under the decree has been paid/adjusted and should be recorded as certified, this is to give you notice that you are to appear before this Court on the day of , to show cause why the payment/adjustment aforesaid should not be recorded as certified.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 2.

PRECEPT. (Section 46.)

(TITLE.)

UPON hearing the decree-holder it is ordered that this precept be sent to the Court of at under section 46 of the Code of Civil Procedure, 1977, with directions to attach the property specified in the annexed schedule and to hold the same pending any application which may be made by the decree-holder for execution of the decree.

Schedule.

Dated the day of 19 .

JUDGE.

No. 3.

Order sending Decree for execution to another Court (O. 21, r. 6.).

(Title.)

Whereas the decree-holder in the above suit has applied to this Court for a certificate to be sent to the Court of at for execution of the decree in the above suit by the said Court, alleging that the judgment-debtor resides or has property within the local limits of the jurisdiction of the said Court, and it is deemed necessary and proper to send a certificate to the said Court under Order XXI, rule 6, of the Code of Civil Procedure, 1977, it is

Ordered.

That a copy of this order be sent to with a copy of the decree and of any order which may have been made for execution of the same and a certificate of non-satisfaction.

Dated the day of 19 .

Judge.

No. 4.

Certificate of non-satisfaction of Decree. (O. 21, r. 6).

(Title.)

Certified that no (1) satisfactian of the decre of this Court in Suit No. of 19 , a copy which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

Dated the day of 19 .

Judge.

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(1) If partial, strike out "no" and state to what extent.

No. 5.

CERTIFICATE OF EXECUTION OF DECREE TRANSFERRED TO ANOTHER COURT. (O. 21, r. 6.)

(TITLE.)

Number of suit and the Court by which the decree was passed.	Names of parties.	Date of application for execution.	Number of the execution case.	Processes issued and dates of service thereof.	Costs of execution.	Amount realised.	How the case is disposed of.	REMARKS.
1	2	3	4	5	6	7	8	9
					R. a. p.	R. a. p.		

SIGNATURE OF MOHARRIR IN CHARGE.

SIGNATURE OF JUDGE.

No. 6.

APPLICATION FOR EXECUTION OF DECREE (O. 21, r. 11.)

In the Court of

I , decree-holder, hereby apply for execution of

the decree herein below set forth:—

No.	Name of parties.	Date of decree.	Whether any appeal preferred from decree	Payment or adjustment, made if any	Previous application if any, with date and result.	Amount with interest due upon the decree or other relief granted thereby together with particulars of any cross decree.	Amount of costs if any, awarded.	Against whom to be executed.	Mode in which the assistance of the Court is required.
1	2	3	4	5	6	7	8	9	10
789 of 1897	A. B.—Plaintiff. C. D—Defendant.	October 11th 1897.	No.	None.	Rs. 72-4 recorded on application if any dated the 4th March 1898.	Rs. 314-8-2 principal interest at 6 per cent. per annum, (from date of decree till payment).	Rs. A. P. As awarded in the decree 47 10 4 Subsequently incurred 8 2 0 Total ... 55 12 4	Against defendant C D.	(WHEN ATTACHMENT AND SALE OF MOVEABLE PROPERTY IS SOUGHT). I pray that the total amount of Rs. (together with interest on the principal sum up to date of payment and the cost of taking out this execution), be realised by attachment and sale of defendant's moveable property as per annexed list and paid to me (WHEN ATTACHMENT AND SALE OF IMMOVEABLE PROPERTY IS SOUGHT). I pray that the total amount of Rs (together with interest on the principal sum up to date of payment,) and the costs of taking out this execution be realised by the attachment and sale of defendant's immoveable property specified at the foot of this application and paid to me.

I declare that what is stated herein is true to the best of my knowledge and belief.

SIGNED , DECREE-HOLDER

Dated the day of 19

(When attachment and sale of immoveable property is sought.)

DESCRIPTION AND SPECIFICATION OF PROPERTY.

The undivided one-third share of the judgment debtor in a house situated in the village of , value Rs. 40, and bounded as follows:—

East by G's house; west by H's house; south by public road; north by private lane and J's house.

I declare that what is stated in the above description is true to the best of my knowledge and belief, and so far as I have been able to ascertain the interest of the defendant in the property therein specified

Signed , decree-holder.

No. 7.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE. (O. 21, r. 16.)

(TITLE.)

To

WHEREAS has made application to this Court for execution of decree in Suit No. of 19 on the allegation that the said decree has been transferred to him by assignment, this is to give you notice that you are to appear before this Court on the day of 19 , to show cause why execution should not be granted.

GIVEN under my hand and the seal of the Courts this day of 19 .

JUDGE.

No. 8.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN EXECUTION OF A DECREE FOR MONEY. (O. 21, r. 30.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this

Court passed on the day of 19 , in Suit No. of 19 , to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid; These are to command you to attach the moveable property of the said as set forth in the schedule hereunto annexed, or which shall be pointed , and unless shall pay to you the said sum of Rs. , the costs of this attachment, to hold the same until further orders from this Court.

DECREE.			
Principal	...		
Interest	...		
Costs	...		
Costs of execution			
further interest	...		
Total	...		

out to you by the said the said together with Rs.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

JUDGE.

No. 9.

WARRANT FOR SEIZURE OF SPECIFIC MOVEABLE PROPERTY ADJUDGED BY DECREE. (O. 21, r. 31.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS was ordered by decree of this Court passed on the day of 19 , in Suit No. of 19 , to deliver to the plaintiff the moveable property (OR a share in the moveable property) specified in the schedule hereunto annexed, and whereas the said property (OR share) has not been delivered;

These are to command you to seize the said moveable property (OR a share of the said moveable property) and to deliver it to the plaintiff or to such person as he may appoint in his behalf.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

JUDGE.

NO. 10.

NOTICE TO STATE OBJECTIONS TO DRAFT OF DOCUMENT. (O. 21, r. 34.)

(TITLE.)

To

TAKE notice that on the day of 19 , the decree-holder in the above suit presented an application to this Court that the Court may execute on your behalf a deed of , whereof a draft is hereunto annexed, of the immoveable property specified hereunder, and that the day of 19 , is appointed for the hearing of the said application, and that you are at liberty to appear on the said day and to state in writing any objections to the said draft.

DESCRIPTION OF PROPERTY.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NO. 11.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, ETC. (O. 21, r. 35.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS the undermentioned property in the occupancy of has been decreed to , the plaintiff in this suit; You are hereby directed to put the said in possession of the same, and you are hereby authorised to remove any person bound by the decree who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

JUDGE.

No. 12.

NOTICE TO SHOW CAUSE WHY WARRANT OF ARREST SHOULD NOT ISSUE. (O. 21, r. 37.)

(TITLE.)

To]

WHEREAS has made application to this Court for execution of decree in suit No. of 19 by arrest and imprisonment of your person, you are hereby required to appear before this Court on the day of 19 , to show cause why you should hot be committed to the civil prison in execution of the said decree.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 13.

WARRANT OF ARREST IN EXECUTION. (O. 21, r. 38.)

(TITLE.)

To

The Bailiff af the Cour .

WHEREAS was adjudged by a decree of the Court in Suit No. of 19 , dated the day of 19 , to pay to the decree-holder the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said decree-holder in satisfaction of the said decree, these are to command you to arrest the said judgment-debtor and unless the said judgment-debtor

Principal	...		
Interest	...		
Costs	...		
Execution	...		
Total	...		

shall pay to you the said sum of Rs. together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 14.

WARRANT OF COMMITTAL OF JUDGMENT-DEBTOR TO JAIL.
(O. 21, r. 40.)

(TITLE.)

To

The Officer-in-charge of the Jail at

WHEREAS who has been brought before this Court this day of 19 , under a warrant in execution of a decree which was made and pronounced by the said Court on the day of 19 , and by which decree it was ordered that the said shou.d pay ;

And whereas the said has not obeyed the decree nor satisfied the Court that he is entitled to be discharged from custody; You are hereby, in the name of His Highness, commanded and required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceeding or until the said decree shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of section 58 of the Code of Civil Procedure, and the Court does hereby fix annas per diem as the rate of the monthly allowance for the subsistence of the said during the confinement under this warrant of committal.

GIVEN under my signature and the seal of the Court, this day of 19 .

JUDGE.

No. 15.

ORDER FOR THE RELEASE OF A PERSON IMPRISONED IN EXECUTION OF A DECREE. (Sections 58, 59.)

(TITLE.)

To

The Officer-in-charge of the Jail at

UNDER orders passed this day, you are hereby directed to set free

judgment-debtor now in your custody.

Dated

JUDGE.

No. 16.

ATTACHMENT IN EXECUTION.

PROHIBITARY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF. (O. 21, r. 46.)

(TITLE.)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 19 , in Suit No. of 19 , in favour of for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from the following property in the possession of the said , that is to say, , to which the defendant is entitled; subject to any claim of the said , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 17.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

(O. 21, r. 46.)

(TITLE.)

To

WHEREAS has failed to satisfy a decree passed against on the day of 19 in Suit No. of 19 , in favour of for Rs. ; It is ordered that the defendant be, and is hereby, prohibited and restrained until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, , and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever or otherwise than into this Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 18.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN THE CAPITAL OF A CORPORATION.

(O. 21, r. 46.)

(TITLE.)

To

Defendant and to , Secretary of Corporation.

WHEREAS has failed to satisfy a decree passed against on the day of 19 , in Suit No. of 19 , in favour of , for Rs. ; It is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court,

from making any transfer of shares in the aforesaid Corporation, namely, , or from receiving payment of any dividends thereon; and you, , the Secretary of the said Corporation, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 19.

ORDER TO ATTACH SALARY OF PUBLIC OFFICER OR SERVANT OF RAILWAY COMPANY OR LOCAL AUTHORITY. (O. 21, r. 48.)

(TITLE.)

To

WHEREAS , judgment-debtor in the above-named case, is a (DESCRIBE OFFICE OF JUDGMENT-DEBTOR) receiving his salary (OR allowances) at your hands; and whereas decree-holder in the said case, has applied in this Court, for the attachment of the salary (OR allowances) of the said to the extent of due to him under the decree; You are hereby required to withhold the said sum of from the salary of the said in monthly instalments of and to remit the said sum (OR monthly instalments) to this Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 20.

ORDER OF ATTACHMENT OF NEGOTIABLE INSTRUMENT. (O. 21, r. 51.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS an order has been passed by this Court on the day of 19 , for the at-

tachment of ;
You are hereby directed to seize the said
and bring the same into Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 21.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE CUSTODY OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

(O. 21, r. 52).

(TITLE.)

To

SIR,

The palintiff having applied, under rule 52 of Order XXI of the Code of Civil Procedure, 1977. for an attachment of certain money now in your hands (HERE STATE HOW THE MONEY IS SUPPOSED TO BE IN THE HANDS OF THE PERSON ADDRESSED, ON WHAT ACCOUNT, ETC.), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,
Sir,
Your most obedient servant,

JUDGE.

Dated the day of 19 .

No. 22.

NOTICE OF ATTACHMENT OF A DECREE OF THE COURT WHICH PASSED IT. (O. 21, r. 53.)

(TITLE.)

To

The Judge of the Court of

SIR,

I have the honour to inform you that the decree obtained

in your Court on the day of 19 , by in Suit No. of 19 , in which he was and was has been attached by this Court on the application of , the in the suit specified above. You are therefore requested to stay the execution of the decree of your Court until you receive an intimation from this Court that the present notice has been cancelled or until execution of the said decree is applied for by the holder of the decree now sought to be executed or by his judgment-debtor.

I have the honour, etc.,

JUDGE.

Dated the day of 19 .

No. 23.

NCTICE OF ATTACHMENT OF A DECREE TO THE HOLDER OF THE DECREE. (O. 21, r. 53.)

(TITLE.)

To

WHEREAS an application has been made in this Court by the decre-holder in the above suit for the attachment of a decree obtained by you on the day of 19 , in the Court of in Suit No. of 19 , in which was and was ; It is ordered that you, the said , be, and you are ereby, prohibited and restrained, until the further order of this Court, from transferring or charging the same in any way.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 24.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY. (O. 21, r. 54.)

(TITLE.)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 19 , in Suit No. of 19 , in favour of for Rs. ; It is ordered that you, the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from transferring or charging the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 19 .

Schedule.

JUDGE.

No. 25.

ORDER FOR PAYMENT TO THE PLAINTIFF, ET., OF MONEY, ETC., IN THE HANDS OF A THIRD PARTY. (O. 21, r. 56.)

(TITLE.)

To

WHEREAS the following property has been attached in execution of a decree in Srt No. of 19 , pased on the day of 19 , in favor of for Rs. ; It is ordered that the property so attached, consisting of Rs. in money and Rs. in currency-notes, or a sufficient part thereof to satisfy the said decree,

shall be paid over by you, the said
to

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 26.

NOTICE TO ATTACHING CREDITOR. (O. 21, r. 58.)

(TITLE.)

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Suit No. of 19 , this is to give you notice to appear before this Court on , the day of 19 , either in person or by a pleader of the Court duly instructed to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 27.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY (O. 21, r. 66.)

(TITLE).

To

The Bailiff of the Court.

THESE are to command you to sell by auction, after giving days' previous notice, by affixing the same in this court-house and after making due proclamation, the property attached under a warrant from this Court, dated the day of 19 , in execution of

a decree in favour of in Suit No. 19 , or so much of the said property as shall realise the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

Given under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 28.

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION (O. 21, r. 66.)

(TITLE.)

To JUDGMENT-DEBTOR.

WHEREAS in the above-named suit , the decree-holder, has applied for the sale of ; You are hereby informed that the day of 19 , has been fixed for settling the terms of the proclamation of sale.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 29.

PROCLAMATION OF SALE. (O. 21, r. 66.)

(TITLE.)

NOTICE is hereby given that, under rule 64 of Order XXI of the Code of Civil Procedure, 1977, an order has been passed

by this Court for the sale of the attached property mentioned in the annexed schedule, in satisfaction of the claim of the decree-holder in the suit mentioned in the margin (1), amounting with costs and interest up to date of sale to the sum of

(1) Suit No. of 19 , decided by the of in which was plaintiff and was defendant.

[The sale will be by public auction, and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the judgment-debtors above-named as mentioned in the schedule below; and the liabilities and claims attaching to the said property, so far as they have been ascertained, are those specified in the schedule against each lot.

In the absence of any order of postponement, the sale will be held by
at the monthly sale commencing at o'clock on the
at . In the event, however, of the debt above specified and of the costs of the sale being tendered or paid before the knocking down of any lot the sale will be stopped.

At the sale the public generally are invited to bid, either personally or by duly authorised agent. No bid by, or on behalf of, the judgment-creditors above-mentioned, however, will be accepted, nor will any sale to them be valid without the express permission of the Court previously given. The following are the further:—

CONDITIONS OF SALE.

1. The particulars specified in the schedule below have been stated to the best of the information of the Court, but the Court will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid, or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid, and provided that it shall be in the discretion of the Court or officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it subject always to the provisions of rule 69 of Order XXI.

5. In the case of moveable property, the price of each lot

shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and re-sold.

6. In the case of immovable property, the person declared to be purchaser shall pay immediately after such declaration a deposit of 25 per cent. on the amount of his purchase money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and re-sold.

7. The full amount of the purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holdiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase-money within the period allowed, the property shall be re-sold after the issue of a fresh notification of sale. The deposit, after defraying the expenses of the sale, may, if the Court thinks fit, be forfeited to Government and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

SCHEDULE OF PROPERTY.

Number of lot.	Description of property to be sold, with the name of each owner where there are more judgment-debtors than one.	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to Government.	Detail of any incumbrances to which the property is liable.	Claims, if any, which have been put forward to the property and any other known particulars bearing on its nature and value.

No. 30.

ORDER ON THE NAZIR FOR CAUSING SERVICE OF PROCLAMATION OF SALE. (O. 21, r. 66.)

(TITLE.)

To

The Nazir of the Court.

WHEREAS an order has been made for the sale of property of the judgment-debtor specified in the schedule hereunder annexed, and whereas the day of 19 , has been fixed for the sale of the said property, copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule, to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on the court-house, and then to submit to this Court a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of 19 .

Schedule.

JUDGE.

No. 31.

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OR PROPERTY BY REASON OF THE THE PURCHASER'S DEFAULT. (O. 21, r. 71.)

(TITLE.)

CERTIFIED that at the re-sale of the property in execution of the decree in the above-named suit, in consequence of the default on the part of , purchaser, there was a deficiency in the price of the said property amounting to Rs. , and that the expenses attending such re-sale amounted to Rs. , making a total of Rs. , which sum is recoverable from the defaulter.

Dated the day of 19 .

OFFICER HOLDING THE SALE,

No. 32.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION. (O. 21, r. 79.)

(TITLE.)

To

WHEREAS
has become the purchaser at a public sale in execution of the decree in the above suit of
now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 33.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER. (O. 21, r. 79.)

(TITLE.)

To and to

WHEREAS has become the purchaser at a public sale in execution of the decree in the above suit of
being debts due from you to you ;
It is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 34.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION. (O. 21, r. 79.)

(TITLE.)

To

and , Secretary of Corporation.

WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit, of certain shares in the above Corporation, that is to say, of

standing in the name of you

, It is ordered that you

be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said , the purchaser aforesaid, or from receiving any dividends thereon; and you Secretary of the said Corporation, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 35.

CERTIFICATE TO JUDGMENT-DEBTOR AUTHORISING HIM TO MORTGAGE, LEASE OR SELL PROPERTY. (O. 21, r. 83.)

(TITLE.)

WHEREAS in execution of the decree passed in the above suit an order was made on the day of 19 for the sale of the under-mentioned property of the judgment-debtor and whereas the Court has, on the application of the said judgment-debtor, postponed the said sale to enable him to raise

the amount of the decree by mortgage, lease or private sale of the said property or of some part thereof:

This is to certify that the Court doth hereby authorise the said judgment-debtor to make the proposed mortgage, lease or sale within a period of from the date of this certificate; provided that all moneys payable under such mortgage, lease or sale shall be paid into this Court and not to the said judgment-debtor.

DESCRIPTION OF PROPERTY.

GIVEN under my hand and the seal of Court this day of 19 .

JUDGE.

No. 36.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE.

(O. 21, rr. 90, 92.)

(TITLE.)

To

WHEREAS the under-mentinoned property was sold on the day of 19 in execution of the decree passed in the above-named suit, and whereas , the decree-holder [OR judgment-debtor], has applied to this Court to set aside the sale of the said property on the ground of a material irregularity [OR fraud] in publishing [OR conducting] the sale, namely, that:

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 , when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court this day of 19 .

DESCRIPTION OF PROPERTY.

JUDGE.

No. 37.

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE. (O. 21, rr. 91, 92.)

(TITLE.)

To

WHEREAS , the purchaser of the under-mentioned property sold on the day of 19 in execution of the decree passed in the above-named suit, has applied to this Court to set aside the sale of the said property on the ground that , the judgment-debtor, has no saleable interest therein:

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proofs in this Court on the day of 19 when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

DESCRIPTION OF PROPERTY.

JUDGE.

No. 38.

CERTIFICATE OF SALE OF LAND. (O. 21, r. 94.)

(TITLE.)

THIS is to certify that has been declared the purchaser at a sale by public auction on the day of 19 , of in execution of decree in this suit, and that the said sale has been duly confirmed by this Court.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 39.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION. (O. 21, r. 95.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS has become the certified purchaser of at a sale in execution of decree in suit No. of 19 ; You are hereby ordered to put the said ; the certified purchaser, as aforesaid, in possession of the same.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 40.

SUMMONS TO APPEAR AND ANSWER CHARGE OF OBSTRUCTING EXECUTION OF DECREE. (O. 21, r. 97.)

(TITLE.)

To

WHEREAS , the decree-holder in the above suit, has complained to this Court that you have resisted (OR obstructed) the officer charged with the execution of the warrant for possession:

You are hereby summoned to appear in this Court on the day of 19 at A.M., to answer the said complaint.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 41.

WARRANT OF COMMITTAL. (O. 21, r. 98.)

(TITLE.)

To

The Officer in Charge of the Jail at

WHEREAS the undermentioned property has been decreed to , the plaintiff in this suit, and whereas the Court is satisfied that without any just cause resisted [OR obstructed] and is still resisting [OR obstructing] the said in obtaining possession of the property, and whereas the said has made application to this Court that the said be committed to the civil prison:

You are hereby commanded and required to take and receive the said into the civil prison and to keep him imprisoned therein for the period of days.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 42.

AUTHORITY OF THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

(Section 72.)

(TITLE.)

To

, Collector of

SIR,

In answer to your communication No. , dated , representing that the sale in execution of the decree in this suit of land situate within your district is objectionable, I have the houour to inform you that you are authorised to make provision for the satisfaction of the said decree in the manner recommended by you.

I have the honour to be,
Sir,
Your most obedient servant,

JUDGE.

APPENDIX F.

SUPPLEMENTAL PROCEEDINGS.

No. 1.

WARRANT OF ARREST BEFORE JUDGMENT. (O. 38, r. 1.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS , the plaintiff in the above suit claims the sum of Rs. as noted in the margin, and has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to . These are to command you to demand and receive from the said the sum of Rs. as sufficient to satisfy the plaintiff's claim, and unless the said sum of Rs. is forthwith delivered to you by or on behalf of the said , to take the said into custody, and to bring him before this Court, in order that he may show cause why he should not furnish security to the amount of Rs. for his personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until satisfaction of any decree that may be passed against him in the suit.

Principal	...			
Interest	..			
Costs	...			
TOTAL	...			

GIVEN under may hand and the seal of the Court, this day of 19 .

JUDGE.

No. 2.

SECURITY FOR APPEARANCE OF A DEFENDANT ARRESTED BEFORE JUDGMENT. (O. 38, r. 2.)

(TITLE.)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant, has been arrested and brought before the Court;

And whereas on the failure of the said defendant to show cause why he should not furnish security for his appearance, the Court has ordered him to furnish such security:

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall appear at any time when called upon while the suit is pending and until satisfaction of any decree that may be passed against him in the said suit: and in default of such appearance I bind myself, my heirs and executors to pay to the said Court, at its order, any sum of money that may be adjudged against the said defendant in the said suit.

Witness my hand at this day of 19 .

(SIGNED).

Witnesses.

1.

2.

No. 3.

SUMMONS TO DEFENDANT TO APPEAR ON SURETY'S APPLICATION FOR DISCHARGE. (O. 38, r. 3.)

(TITLE.)

To

WHEREAS , who became surety on the day of 19 for your appearance in the above suit, has applied to this Court to be discharged from his obligation:

You are hereby summoned to appear in this Court in person on the day of 19 , at A. M., when the said application will be heard and determined.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 4.

ORDER FOR COMMITTAL. (O. 38, r. 4.)

(TITLE.)

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance

of , the defendant, to answer any judgment that may be passed against him in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which he has failed to do; it is ordered that the said defendant be committed to the civil prison until the decision of the suit; or, if judgment be pronounced against him, until satisfaction of the decree.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 5.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE. (O. 38, r, 5.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit

These are to command you to call upon the said defendant on or before the day of 19 either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to satisfy any decree that may be passed against him; or to appear and show cause why he should not furnish security; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 6.

SECURITY FOR THE PRODUCTION OF PROPERTY (O. 38, r. 5.)

(TITLE.)

WHEREAS at the instance of , the plaintiff in the above suit, the defendant has been directed by the Court to furnish security in the sum of Rs. to produce and place at the disposal of the Court the property specified in the schedule hereunto annexed;

Therefore I have voluntarily become surety and do hereby bind myself, my heirs and executors, to the said Court, that the said defendant shall produce and place at the disposal of the Court, when required, the property specified in the said schedule, or the value of the same, or such portion thereof as may be sufficient to satisfy the decree; and in default of his so doing, I bind myself, my heirs and executors, to pay to the said Court, at its order, the said sum of Rs.

or such sum not exceeding the said sum as the said Court may adjudge.

Schedule.

Witness my hand at this day of 19 .

(Signed.)

Witnesses.

1.

2.

No. 7.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY. (O. 38, r. 6.)

(TITLE.)

To

The Bailiff of the Court.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the

defendant, to furnish security to fulfil any decree that may be passed against him in the suit, and whereas the Court has called upon the said to furnish such security, which he has failed to do: These are to command you to attach , the property of the said , and keep the same under safe and secure custody until the further order of the Court; and you are further commanded to return this warrant on or before the day of 19 with an endorsement certifying the date on which and the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 8.

TEMPORARY INJUNCTIONS. (O. 39, r. 1.)

(TITLE.)

UPON motion made unto this Court by , Pleader of [OR Counsel for] the plaintiff A. B., and upon reading the petition of the said plaintiff in this matter filed [this day] [OR the plaint filed in this suit on the day of , OR the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof [IF AFTER NOTICE AND DEFENDANT NOT APPEARING: ADD, and also the evidence of as to service of notice of this motion upon the defendant C.D.]: This Court doth order that an injunction be awarded to restrain the defendant C. D., his servants, agents and workmen, from pulling down or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [OR in the written statement, OR petition, of the plaintiff and evidence at the hearing of this motion mentioned], being No. 9, Oilmongers Street, Hindupur, in the Tehsil of , and from selling the materials whereof the said house is composed, until the hearing of this suit or until the further order of this Court.

Dated this day of 19 .

JUDGE.

[WHERE THE INJUNCTION IS SOUGHT TO RESTRAIN THE NEGOTIATION OF A NOTE OR BILL, THE ORDERING PART OF THE ORDER MAY RUN THUS:—]

to restrain the defendants and from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [OR bill of exchange] in question, dated on or about the , etc., mentioned in the plaintiff's plaint [OR petition] and the evidence heard at this motion until the hearing of this suit, or until the further order of this Court.

[IN COPYRIGHT CASES]

to restrain the defendant C. D., his servants, agents or workmen, from printing, publishing or vending a book, called or any part thereof, until the, etc.

[WHERE PART ONLY OF A BOOK IS TO BE RESTRAINED].

to restrain the defendant C. D., his servants agents or workmen, from printing, publishing, selling or otherwise disposing of such parts of the book in the plaint [OR petition and evidence, etc.] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [OR which is contained in page to page both inclusive] until , etc.

[IN PATENT CASES]

to restrain the defendant C. D., his agents, servants and workmen, from making or vending any perforated bricks [OR AS THE CASE MAY BE] upon the principle of the inventions in the plaintiff's plaint [OR petition, etc., OR written statement, etc.,] mentioned, belonging to the plaintiffs', or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [OR as THE CASE MAY BE] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing, etc.

[IN CASES OF TRADE MARKS]

to restrain the defendant C. D., his servants, agents or workmen, from selling,

or exposing for sale, or procuring to be sold, any composition or blacking [OR AS THE CASE MAY BE] described as or purporting to be blacking manufactured by the plaintiff A. B., in bottles having affixed thereto such labels as in the plaintiff's plaint [OR petition, etc.] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff A. B., and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff A. B., until the, etc.

[TO RESTRAIN A PARTNER FROM IN ANY WAY INTERFERING IN THE BUSINESS.]

to restrain the defendant C. D., his agents and servants, from entering into any contract, and from accepting, drawing endorsing or negotiating any bill of exchange, note or written security in the name of the partnership-firm of B. and D., and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise agreement or undertaking, and from doing, or causing to be done, any act, in the name or on the credit of the said partnership-firm of B. D., or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking until the, etc.

No. 9.

APPOINTMENT OF A RECEIVER. (O. 40, r. 3.)

(TITLE.)

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 19 , in favour of ; You are hereby (subject to your giving security to the satisfaction of the Court) appointed receiver of the said property under Order XL of the Code of Civil Procedure, 1977, with full powers under the provisions of that order.

You are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day 19 .

JUDGE.

No. 10.

BOND TO BE GIVEN BY RECEIVER. (O. 40, r. 3.)

(TITLE.)

KNOW all men by these presents, that we, and and , are jointly and severally bound to of the Court of in Rs. to be paid to the said or his successor in office for the time being. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 19 .

Whereas a plaint has been filed in this Court by against . for the purpose of [HERE INSERT THE OBJECT OF SUIT]:

And whereas the said has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property and to get in the outstanding moveable property of in the said plaint named:

Now the condition of this obligation is such, that if the above-bounden shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property, of the said at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

Signed and delivered by the above-bounden in the presence of

NOTE—If deposit of money is made, the memorandum thereof should follow the terms of the condition of the bond.

APPENDIX G.

APPEAL, REFERENCE AND REVIEW.

No. 1.

Memorandum of Appeal. (O. 41, r. 1.)

(Title.)

The above-named appeals to the Court at from the decree of in Suit No. of 19 , dated the, day of 19 , and sets forth the following grounds of objection to the decree appealed from, namely:—

No. 2.

Security Bond to be given on order being made to stay Execution of Decree. (O. 41, r. 5.)

(Title.)

To

This security bond on stay of execution of decree executed by witnesseth:—

That , the plaintiff in Suit No. of 19 , having sued , the defendant, in this Court and a decree having been passed on the day of 19 , in favour of the plaintiff, and the defendant having preferred an appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder having applied to execute the decree, the defendant has made an application praying for stay of execution and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. mortgaging the properties specified in the schedule hereunto annexed; and covenant that if the decree of the first Court be confirmed or varied by the Appellate Court the said defendant shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him therunder, and if he should fail therein then any amount so payable shall be realised from the pro-

perties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19 .

Schedule.

Witnessed by (Signed.)

1.
2.

No. 3.

Security Bond to be given during the Pendency of Appeal. (O. 41, r. 6.)

(Title.)

To

This security bond on stay of execution of decree executed by witnesseth:—

That , the plaintiff in suit No. of 19 , having sued , the defendant, in this Court and a decree having been passed on the day of 19 , in favour of the plaintiff, and the defendant having preferred on appeal from the said decree in the Court, the said appeal is still pending.

Now the plaintiff decree-holder has applied for execution of the said decree and has been called upon to furnish security. Accordingly I, of my own free will, stand security to the extent of Rs. mortgaging the properties specified in the schedule hereunto annexed, and covenant that if the decree of the first Court be reversed or varied by the Appellate Court, the plaintiff shall restore any property which may be or has been taken in execution of the said decree and shall duly act in accordance with the decree of the Appellate Court and shall pay whatever may be payable by him thereunder, and if he should fail therein then any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due, I and my legal representatives will be personally liable to pay the balance. To this

effect I execute this security bond this day of 19 .

Schedule.

Witnessed by (Signed.)

1.
2.

No. 4.

SECURITY FOR COSTS OF APPEAL. (O. 41, r. 10.)

(TITLE.)

To

THIS security bond for costs of appeal executed by witnesseth:—

This appellant has preferred an appeal from the decree in Suit No. of 19 , against the respondent, and has been called upon to furnish security. Accordingly I, of my own free-will, stand security for the costs of the appeal, mortgaging the properties specified in the schedule hereunto annexed. I shall not transfer the said properties or any part thereof, and in the event of any default on the part of the appellant, I shall duly carry out any order that may be made against me with regard to payment of the costs of appeal. Any amount so payable shall be realised from the properties hereby mortgaged, and if the proceeds of the sale of the said properties are insufficient to pay the amount due I and my legal representatives will be personally liable to pay the balance. To this effect I execute this security bond this day of 19 .

Schedule.

(Signed.)

Witnessed by

1.
2.

No. 5.

INTIMATION TO LOWER COURT OF ADMISSION OF APPEAL. (O. 41., r. 13.)

(TITLE.)

To

You are hereby directed to take notice that , the in the above suit, has preferred an appeal to this Court from the decree passed by you therein on the , day of 19 .

You are requested to send with all practicable despatch all material papers in the suit.

Dated the day of 19 .

JUDGE.

No. 6.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL. (O. 41, r. 14.)

(TITLE.)

APPEAL from the of the Court of dated the day of 19 .

To

RESPONDENT.

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 19 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorised to act for you in this appeal, it will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NOTE.—If a stay of execution has been ordered, intimation should be given of the fact on this notice.

No. 7.

NOTICE TO A PARTY TO A SUIT NOT MADE A PARTY TO THE APPEAL BUT JOINED BY THE COURT AS A RESPONDENT. (O. 41, r. 20.)

(TITLE.)

To

WHEREAS you were a party in Suit No. of 19 , in the court of , and whereas the has preferred an appeal to this Court from the decree passed against him in the said suit and it appears to this Court that you are interested in the result of the said appeal:

This is to give you notice that this Court has directed you to be made a respondent in the said appeal and has adjourned the hearing thereof till the day of 19 , at A.M. If no appearance is made on your behalf on the said day and at the said hour the appeal will be heard and decided in your absence.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 8.

MEMORANDUM OF CROSS OBJECTION. (O. 41, r. 22.)

(TITLE.)

WHEREAS the has preferred an appeal to the Court at from the decree of in Suit No. of 19 , dated the day of 19 , and whereas notice of the day fixed for hearing the appeal was served on the on the day of 19 , the files this memorandum of cross objection under rule 22 of order XLI of the Code of Civil Procedure, 1977, and sets forth the following grounds of objection to the decree appealed from, namely:—

No. 9.

DECREE IN APPEAL. (O. 41, r. 35.)

(TITLE.)

Appeal No. of 19 from the decree of the Court of dated the day of 19 .

Memorandum of Appeal.

PLAINTIFF.

DEFENDANT.

The above-named appeals to the Court at from the decree of in the above suit, dated the day of 19 , for the following reasons, namely:—

This appeal coming on for hearing on the day of 19 , before , in the presence of for the appellant and of for the respondent, it is ordered—

The costs of this appeal, as detailed below, amounting to Rs. , are to be paid by . The costs of the original suit are to be paid by .

GIVEN under my hand this day of 19 .

JUDGE.

COSTS OF APPEAL.

Appellant.	Amount.	Respondent.	Amount.
	Rs. a. p.		Rs. a. p.
1. Stamp for memorandum of appeal ...		Stamp for power ...	
2. Do for power ...		Do. for petition ...	
3. Service of processes ...		Service of processes ...	
4. Pleader's fee on Rs- ...		Pleader's fee on Rs. ...	
Total ...		Total ...	

No. 10.

Application to appeal in forma pauperis. (O. 44, r. 1.)

(Title.)

I the above-named, present the accompanying memorandum of appeal from the decree in the above suit and apply to be allowed to appeal as a pauper.

Annexed is a full and true schedule of all the moveable and immoveable property belonging to me with the estimated value thereof.

Dated the day of 19 .

(Signed.)

Note—Where the application is by the plaintiff he should state whether he applied and was allowed to sue in the Court of first instance as a pauper.

No. 11.

Notice of appeal in forma pauperis. (O. 44, r. 1.)

Whereas the above-named has applied to be allowed to appeal as a pauper from the decree in the above suit dated the day of 19 , and whereas the day of 19 , has been fixed for hearing the application, notice is hereby given to you that if you desire to show cause why the applicant should not be allowed to appeal as a pauper an opportunity will be given to you of doing so on the afore-mentioned date.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

Nos. 12 and 13.

Omitted.

No. 14.

Notice to show Cause why a Review should not be granted. (O. 47, r. 4.)

(Title.)

To

Take notice that has applied to this Court for a review of its decree passed on the day of 19 , in the above case. The day of 19 , is fixed for you to show cause why the Court should not grant a review of its decree in this case.

Given under my hand and the seal of the Court, this day of 19 .

Judge.

APPENDIX H.

MISCELLANEOUS.

No. 1.

Agreement of Parties as to issues to be tried. (O. 14, r. 6.)

(Title.)

Whereas we, the parties in the above suit, are agreed as to the question of fact (or of law) to be decided between us and the point at issue between us is whether a claim founded on a bond, dated the day of 19 , and filed as Exhibit in the said suit, is or is not beyond the statute of limitation (or state the point at issue whatever it may be):

We therefore severally bind ourselves that, upon the finding of the Court in the negative (or affirmative) of such issue, will pay to the said the sum of rupees (or such sum as the Court shall hold to be due thereon), and I, the said , will accept the said sum of rupees (or such sum as the Court shall hold to be due) in full satisfac-

tion of my claim on the bond aforesaid [or .that upon such finding I, the said
will do or abstain from doing, etc., etc.].

PLAINTIFF.
DEFENDANT.

Witnesses—

1.

2.

Dated the day of 19 .

No. 2.

NOTICE OF APPLICATION FOR THE TRANSFER OF A SUIT TO ANOTHER COURT FOR TRIAL. (SECTION 24.)

In the Court of the District Judge of
No. of 19 .

To

Whereas an application, dated the day of 19 has been made to this Court by the in Suit No. of 19 now pending in the Court of the at , in which is plaintiff and is defendant, for the transfer of the suit for trial to the Court of the at :—

You are hereby informed that the day of 19 , has been fixed for the hearing of the application, when you will be heard if you desire to offer any objection to it.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 3.

NOTICE OF PAYMENT INTO COURT. (O. 24, r. 2.)

(TITLE.)

TAKE notice that the defendant has paid into Court Rs. and says that that sum is sufficient to satis-

fy the plaintiff's claim in full.

X. Y., PLEADER FOR THE DEFENDANT.

To *Z.*, PLEADER FOR THE PLAINTIFF.

No. 4.

NOTICE TO SHOW CAUSE. (GENERAL FORM.)

(TITLE.)

To

WHEREAS the above-named has made application to this Court that ;

You are hereby warned to appear in this Court in person or by a pleader duly instructed on the day of 19 , at o'clock in the forenoon, to show cause against the application, failing wherein, the said application will be heard and determined *ex parte*.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 5.

LIST OF DOCUMENTS PRODUCED BY PLAINTIFF/DEFENDANT. (O. 13, r. 1.)

(TITLE.)

No.	Description of document.	Date, if any, which the document bears.	Signature of party or pleader.
1	2	3	4

No. 6.

NOTICE TO PARTIES OF THE DAY FIXED FOR EXAMINATION, OF A WITNESS ABOUT TO LEAVE THE JURISDICTION.
(O. 18, r. 16.)

(TITLE.)

To

PLAINTIFF (or DEFENDANT).

WHEREAS in the above suit application has been made to the Court by that the examination of , a witness required by the said , in the said suit may be taken immediately; and it has been shown to the Court's satisfaction that the said witness is about to leave the Court's jurisdiction (OR ANY OTHER GOOD AND SUFFICIENT CAUSE TO BE STATED):

TAKE notice that the examination of the said witness will be taken by the Court on the day of 19 .

Dated the day of 19 .

JUDGE.

No. 7.

COMMISSION TO EXAMINE ABSENT WITNESS.
(O. 26, rr. 4, 18.)

(TITLE.)

To

WHEREAS the evidence of is required by the in the above suit; and whereas ; you are requested to take the evidence on interrogatories (OR VIVA VOCE) of such witness , and you are hereby appointed Commissioner for that purpose. The evidence will be taken in the presence of the parties or their agents if in attendance, who will be at liberty to question the witness on the points specified, and you are further requested to make return of such evidence as soon as it may be taken.

Process to compel the attendance of the witness will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 8.

LETTER OF REQUEST. (O. 26, r. 5.)

(TITLE.)

(Heading:—To the President and Judges of, etc., etc., OR AS THE CASE MAY BE.)

WHEREAS a suit is now pending in the in which A. B., is plaintiff and C. D. is defendant; And in the said suit the plaintiff claims

(ABSTRACT OF CLAIM).

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

E. F., of
G. H., of and
I. J., of

And it appearing that such witnesses are resident within the jurisdiction of your honourable Court;

Now I , as the of the said Court, have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the said Court, you, as the President and Judges of the said , or some one or more of you, will be pleased to summon the said witness (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to summon) to attend at such time and place as you shall appoint before some one or more of you or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (OR VIVA VOCE) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing,

if any, for the examination of other witnesses to the said Court.

(NOTE.—If the request is directed to a Foreign Court, the words "through His Majesty's Secretary of State for Foreign Affairs for transmission" should be inserted after the words "other witnesses" in the last line of this form.)

No. 9.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS. (O. 26, rr. 9, 11.)

(TITLE.)

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; You are hereby appointed Commissioner for the purpose of

Process to compel the attendance before you of any witnesses, or for the production of any documents whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction, on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, ths day of 19 .

i

JUDGE.

No. 10.

COMMISSION TO MAKE A PARTITION. (O. 26, r. 13.)

(TITLE.)

To

WHEREAS it is deemed requisite for the purposes of this suit that a commission should be issued to make the partition or separation of the property specified in, and according to the rights as declared in, the decree of this Court, dated the day of 19 ; You are hereby appointed Commissioner for the said purpose and are directed to make such inquiry as may be necessary, to divide the said property according to the best of your skill and judgment in the shares set out in the said decree, and to allot such shares to the several parties. You are hereby authorised to award sums to be paid to any party by any other party for the purpose of equalizing the value of the shares.

Process to compel the attendance before you of any witness, or for the production of any documents, whom or which you may desire to examine or inspect, will be issued by any Court having jurisdiction on your application.

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NO. 11.

NOTICE TO MINOR DEFENDANT AND GUARDIAN. (O. 32, r. 3.)

(TITLE.)

To

MINOR DEFENDANT
NATURAL GUARDIAN.

WHEREAS an application has been presented on the part of the plaintiff in the above suit for the appointment of a guardian for the suit to the minor defendant; you, the said minor, and you[1] are hereby required to take notice that unless within days from the service upon you of this notice, an application is made to this Court for the appointment of you[1] or of some friend of you, the minor, to act as guardian for the suit, the Court will proceed to appoint some other person to act as a guardian to the minor for the purposes of the said suit.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NO. 12.

NOTICE TO OPPOSITE PARTY OF DAY FIXED FOR HEARING EVIDENCE OF PAUPERISM. (O. 33, r. 6.)

(TITLE.)

To

WHEREAS has applied to this Court for permission to institute a suit against

[1] Here insert the name of guardian.

IN *forma pauperis* under Order XXXIII of the Code of Civil Procedure, 1977; and whereas the Court sees no reason to reject the application; and whereas the day of 19 , has been fixed for receiving such evidence as the applicant may adduce in proof of his pauperism and for hearing any evidence which may be adduced in disproof thereof:

Notice is hereby given to you under rule 6 of Order XXXIII that in case you may wish to offer any evidence to disprove the pauperism of the applicant, you may do so on appearing in this Court on the day of 19 .

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 13.

NOTICE TO SURETY OF HIS LIABILITY UNDER A DECREE.
(Section 145.)

(TITLE.)

To

WHEREAS you did on become liable as surety for the performance of any decree which might be passed against the said defendant in the above suit; and whereas a decree was passed on the day of 19 against the said defendant for the payment of , and whereas application has been made for execution of the said decree against you:

Take notice that you are hereby required on or before the day of 19 to show cause why the said decree should not be executed against you, and if no sufficient cause shall be, within the time specified, shown to the satisfaction of the Court, an order for its execution will be forthwith issued in the terms of the said application.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

NO. 14.

REGISTER OF CIVIL SUITS. (O. 4, r. 2.)

COURT of the of at

REGISTER OF CIVIL SUITS in the year 19 .

Date of presentation of plaint.	PLAINTIFF.	DEFENDANT.	CLAIM.	APPEARANCE.	JUDGMENT.	APPEAL.	EXECUTION	RETURN OF EXECUTION.
Number of suit.	Name.	Name.	Amount or value.	Day for parties to appear.	For whom.	Date of decision of appeal	Date of application.	Minute of other Return than payment or arrest, and date of every return.
	Description.	Description.	When the cause of action accrued.	Plaintiff.	For what, and amount.	Judgment in appeal.	Date of order.	
	Place of residence.	Place of residence.		Defendant.			Against whom.	
			Particulars.	Date.			For what and amount if money.	
							Amount of costs.	
							Amount paid into Court.	
							Arrested.	

NOTE.—Where there are numerous plaintiffs or numerous defendants, the name of the first plaintiff only, or the first defendant only, as the case may be, need be entered in the register.

No. 15.

REGISTER OF APPEALS. (O. 41, r. 9.)

COURT (*OR* HIGH COURT) AT

REGISTER OF APPEALS FROM DECREES IN THE YEAR 19 .

Date of memorandum.	Number of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.	
		Name.	Description.	Place of residence	Name.	Description.	Place of residence.	Of what Court.	Number of original Suit.	Particulars.	Amount or value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or varied.	For what or amount.

THE SECOND SCHEDULE.

ARBITRATION.

Arbitration in Suits.

1. (1) Where in any suit all the parties interested agree that any matter in difference between them shall be referred to arbitration, they may, at any time before judgment is pronounced, apply to the Court for an order of reference.

Parties to suit may apply for order of reference.

(2) Every such application shall be in writing and shall state the matter sought to be referred.

2. The arbitrator shall be appointed in such manner as may be agreed upon between the parties.

Appointment of arbitrator.

3. (1) The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the making of the award, and shall specify such time in the order.

Order of reference.

(2) Where a matter is referred to arbitration, the Court shall not, save in the manner and to the extent provided in this schedule, deal with such matter in the same suit.

4. (1) Where the reference is to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators—

Where reference is to two or more, order to provide for difference of opinion.

(a) by the appointment of an umpire; or

(b) by declaring that, if the majority of the arbitrators agree, the decision of the majority shall prevail; or

(c) by empowering the arbitrators to appoint an umpire; or

(d) otherwise as may be agreed between the parties or, if they cannot agree, as the Court may determine.

(2) Where an umpire is appointed, the Court shall fix such time as it thinks reasonable for the making of his award in case he is required to act.

5. (1) In any of the following cases, namely:—

Power of Court to appoint arbitrator in certain cases.

(a) where the parties cannot agree within a reasonable time with respect to the appointment of an arbitrator, or the person appointed refuses to accept the office of arbitrator, or

(b) where an arbitrator or umpire—

(i) dies, or

(ii) refuses or neglects to act or becomes incapable of acting, or

(iii) leaves the State in circumstances showing that he will probably not return at an early date, or

(c) where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so,

any party may serve the other party or the arbitrators, as the case may be, with a written notice to appoint an arbitrator or umpire.

(2) If, within seven clear days after such notice has been served or such further time as the Court may in each case allow, no arbitrator or no umpire is appointed, as the case may be, the Court may, on application by the party who gave the notice, and after giving the other party an opportunity of being heard, appoint an arbitrator or umpire or make an order superseding the arbitrator and in such case shall proceed with the suit.

Powers of arbitrator or umpire appointed under paragraph 4 or 5.

6. Every arbitrator or umpire appointed under paragraph 4 or paragraph 5 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witness and default.

7. (1) The Court shall issue the same processes to the parties and witness whom the arbitrator or umpire desires to examine, as the Court may issue in suits tried before it.

(2) Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award.

8. Where the arbitrators or the umpire cannot complete the award within the period specified in the order, the Court, may, if it thinks fit, either allow further time, and from time to time, either before or after the expiration of the period fixed for the making of the award, enlarge such period; or may make an order superseding the arbitration, and in such case shall proceed with the suit.

Where umpire may arbitrate in lieu of arbitrators.

9. Where an umpire has been appointed, he may enter on the reference in the place of the abirtrators,—

(a) if they have allowed the appointed time to expire without making an award, or

(b) if they have delivered to the Court or to the umpire a notice in writing stating that they cannot agree.

Award to be signed and filed.

10. Where an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Statement of special case by arbitrtors or umpire.

11. Upon any reference by an order of the Court, the arbitrator or umpire may, with the leave of the Court, state the award as the whole or any part thereof in the form of a special case for the opinion of the Court, and the Court shall deliver its opinion thereon, and shall order such opinion to be added to and to form part of the award.

Power to modify or correct award.

12. The Court may, by order, modify or correct an award,—

(a) where it appears that a part of the award is upon a matter not referred to arbitration and such part can be seprated from the other part and does not affect the decision on the matter referred; or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision; or

(c) where the award contains a clerical mistake or an error arising from an accidental slip or omission.

Order as to cost of arbitration.

13. The Court may also make such order as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the award contains no sufficient provision concerning them.

Where award or matter referred to arbitration may be remitted.

14. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrator or umpire, upon such terms as it thinks fit,—

(a) where the award has left undertermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration, unless such matter can be separated without affecting the determination of the matters referred;

(b) where the award is so indefinite as to be incapable of execution;

(c) where an objection to the legality of the award is apparent upon the face of it.

Grounds for setting aside award.

15. (1) An award remitted under paragraph 14 becomes void on failure of the arbitrator or umpire to reconsider it. But no award shall be set

aside except on one of the following grounds, namely:—

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and proceeding with the suit or after the expiration of the period allowed by the Court, or being otherwise invalid.

(2) Where an award becomes void or is set aside under clause (1), the Court shall make an order superseding the arbitration and in such case shall proceed with the suit.

Judgment to be according to award.

16. (1) Where the Court sees no cause to remit the award or any of the matters referred to arbitration for re-consideration in manner aforesaid, and no application has been made to set aside the award, or the Court has refused such application, the Court shall, after the time for making such application has expired, proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Order of reference on agreements to refer.

Application to file in Court agreement to refer to arbitration.

17. (1) Where any persons agree in writing that any difference between them shall be referred to arbitration, the parties to the agreement, or any of them, may apply to any Court having jurisdiction in the matter to which the agreement relates, that the agreement be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application has been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

(3) On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement, other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

(4) Where no sufficient cause is shown, the Court shall order the agreement to be filed, and shall make an order of reference to the arbitrator appointed in accordance with the provisions of the agreement or, if there is no such provision and the parties cannot agree, the Court may appoint an arbitrator.

Stay of suit where there is an agreement to refer to arbitration.

18. Where any party to any agreement to refer to arbitration, or any person claiming under him, institutes any suit against any other party to the agreement, or any person claiming under him, in respect of any matter agreed to be referred, any party to such suit may, at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, apply to the Court to stay the suit; and the Court, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the agreement to refer to arbitration, and that the applicant was, at the time when the suit was instituted and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration, may make an order staying the suit.

Provisions applicable to proceedings under paragraph 17.

19. The foregoing provisions, so far as they are consistent with any agreement filed under paragraph 17, shall be applicable to all proceedings under the order of reference made by the Court under that paragraph, and to the award and to the decree following thereon.

Arbitration without the intervention of a Court.

Filing award in matter referred to arbitration without intervention of Court.

20. (1) Where any matter has been referred to arbitration without the intervention of a Court, and an award has been made thereon, any person interested in the award may apply to any Court having jurisdiction over the subject-matter of the award that the award be filed in Court.

(2) The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

(3) The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Filing and enforcement of such award.

21. (1) Where the Court is satisfied that the matter has been referred to arbitration and that an award has been made thereon, and where no ground such as is mentioned or referred to in paragraph 14 or paragraph 15 is prov-

ed, the Court shall order the award to be filed and shall proceed to pronounce judgment according to the award.

(2) Upon the judgment so pronounced a decree shall follow, and no appeal shall lie from such decree except in so far as the decree is in excess of or not in accordance with the award.

22. Omitted.

23. The forms set forth in the Appendix, with such variations as the circumstances of each case require, shall be issued for the respective purposes therein mentioned.

APPENDIX.

No. 1.

Application for an Order of Reference.

(Title of suit.)

1. This suit is instituted for (STATE NATURE OF CLAIM.)

2. The matter in difference between the parties is (STATE MATTER OF DIFFERENCE).

3. The applicants being all the parties interested have agreed that the matter in difference between them shall be referred to arbitration.

4. The applicants therefore apply for an order of reference.

A. B.
C. D.

Dated the day of 19 .

NOTE.—If the parties are agreed as to the arbitrators, it should be so stated.

No. 2.

Order of Reference.

(Title of suit.)

UPON reading the application presented on the day of 19 it is ordered that the following matter in difference arising in this suit, namely:—

_____

_____

_____

be referred for determination to X and Y, or in case of their not agreeing then to the determination of Z, who is hereby appointed to be umpire; and such arbitrators are to make their award in writing on or before the day of 19 , and in case of the said arbitrators not agreeing in an award the said umpire is to make his award in writing within months after the time during which it is within the power of the arbitrators to make an award shall have ceased.

Liberty to apply.

GIVEN under my hand and the seal of the Court, this day of 19 .

JUDGE.

No. 3.

ORDER FOR APPOINTMENT OF NEW ARBITRATOR.

(TITLE OF SUIT.)

WHEREAS by an order, dated the day of 19 , [STATE ORDER OF REFERENCE AND DEATH, REFUSAL, ETC., OF ARBITRATOR], it is by consent ordered that Z be appointed in the place of X (deceased OR AS THE CASE MAY BE) to act as arbitrator with Y, the surviving arbitrator, under the said order; and it is ordered that the award of the said arbitrators be made on or before the day of 19 .

GIVEN under my hand and the seal of the Court this day of 19 .

JUDGE.

No. 4.

SPECIAL CASE.

(TITLE OF SUIT).

In the matter of an arbitration between A. B. of and C.D . of , the following special case is stated

for the opinion of the Court:—

[HERE STATE THE FACTS CONCISELY IN NUMBERED PARAGRAPHS].

The questions of law for the opinion of the Court are:—

First, whether———————————————————————————————

Secondly, whether———————————————————————————————

X.
Y.

Dated the day of 19 .

———

No. 5.

AWARD.

(TITLE OF SUIT.)

In the matter of an arbitration between A. B. of and C. D. of :—

Whereas in pursuance of an order of reference made by the Court of and dated the day of 19 , the following matter in difference between A. B. and C. D. namely,———————————————————————————————

has been referred to us for determination;

Now we, having duly considered the matter referred to us, do hereby make our award as follows:—

We award—

(1) that———————————————————————————————

(2) that———————————————————————————————

Dated the day of 19 .

X.
Y.

———

THE THIRD SCHEDULE.

EXECUTION OF DECREES BY COLLECTORS.

1. Where the execution of a decree has been transferred to the Collector under section 68, he may—

Powers of Collector.

(a) proceed as the Court would proceed when the sale of immoveable property is postponed in order to enable the judgment-debtor to raise the amount of the decree; or

(b) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(c) sell the property ordered to be sold or so much thereof as may be necessary.

Procedure of Collector in special cases.

2. Where the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for the payment of money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such inquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

3. (1) In any such case as is referred to in paragraph 2, the Collector shall publish a notice, allowing a period of sixty days from the date of its publication for compliance and calling upon—

(a) every person holding a decree for the payment of money against the judgment-debtor capable of execution by sale of his immoveable property and which such decree-holder desires to have so executed, and every holder of a decree for the payment of money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(b) every person having any claim on the said property to submit to the Collector a statement of such claim, and to produce the documents (if any) by which it is evidenced.

(2) Such notice shall be published by being affixed on a conspicuous part of the court-house of the Court which made the original order for sale, and in such other places (if any) as the Collector thinks fit; and where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of decrees for payment of money to be ascertained, and immoveable property available for their satisfaction.

4. (1) Upon the expiration of the said period, the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such inquiry as he may deem necessary for informing himself as to the nature and ex-

tent of such decrees and claims, and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and inquiry.

(2) Where there is no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied and the immoveable property available for that purpose.

(3) Where any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order for sale, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof is within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector, who shall then draw up a statement as above provided in accordance with such decision.

Where district Court may issue notices and hold inquiry.

5. The Collector may, instead of himself issuing the notices and holding the inquiry required by paragraphs 3 and 4, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by paragraphs 3 and 4 and transmit such statement to the Collector.

Effect of decision of Court as to dispute.

6. The decision by the Court of any dispute arising under paragraph 4 or paragraph 5 shall, as between the parties thereto, have the force of and be appealable as a decree.

Scheme for liquidation of decrees for payment of money.

7. (1) Where the amount to be recovered and the property available have been determined as provided in paragraph 4 or paragraph 5, the Collector may,—

(a) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or

(b) if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale, raise such amount and interest

(notwithstanding the original order for sale)—

(i) by letting in perpetuity for a term, on payment of a premium, the whole or any part of the said property; or

(ii) by mortgaging the whole or any part of such property; or

(iii) by selling part of such property; or

(iv) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(v) partly by one of such modes, and partly by another or others of such modes.

(2) For the purpose of managing the whole or any part of such property, the Collector may exercise all the powers of its owner.

(3) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this clause, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

(4) In proceeding under this paragraph the Collector shall be subject to such rules consistant with this Act as may, from time to time, be made in this behalf by the Government.

Recovery of balance (if any) after letting or management.

8. Where, on the expiration of the letting or management under paragraph 7, the amount to be recovered has not been realised, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks from the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

9. (1) The Collector shall, from time to time, render to the Court which made the original order for sale an account of all moneys which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this schedule, and shall hold the balance at the disposal of the Court.

Collector to render accounts to Court

(2) Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and, if the Collector so directs, the expenses of any witnesses summoned by him.

(3) The balance shall be applied by the Court—

(a) in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

(b) where the Collector has proceeded under paragraph 1, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property, or otherwise as the Court may under section 73 direct; or

(c) where the Collector has proceeded under paragraph 2,—

(i) in keeping down the interest on incumbrances on the property;

(ii) where the judgment-debtor has no other sufficient means of subsistence, in providing for his subsistance to such amount as the Court thinks fit; and

(iii) in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered.

(4) No other holder of a decree for the payment of money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied, and the residue (if any) shall be paid to the judgment-debtor or such other persons as the Court directs.

10. Where the Collector sells any property under this schedule, he shall put it up to public auction in one or more lots, as he thinks fit, and may—

Sales how to be conducted.

(a) fix a reasonable reserved price for each lot;

(b) adjourn the sale for a reasonable time whenever, for reasons to be recorded, he deems the adjournment neces-

sary for the purpose of obtaining a fair price for the property;

(c) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holder.

11. (1) So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any process against such property or part in execution of a decree for the payment of money.

(2) During the same period no Civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph 7.

(3) The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived.

Provision where property is in several districts.

12. Where the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by paragraphs 1 to 10 shall be exercised and performed by any one of the Collectors of the said districts as the Government may by general rule or special order direct.

Powers of Collector to compel attendance and production.

13. In exercising the powers conferred on him by paragraphs 1 to 10 the Collector shall have the powers of a Civil Court to compel the attendance of parties and witnesses and the production of documents.

THE FOURTH SCHEDULE

Omitted.

THE FIFTH SCHEDULE..

Omitted.

HIGH COURT OF JUDICATURE, JAMMU & KASHMIR.

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[1]NOTIFICATION.

DATED 27TH NOVEMBER 1931.

No. 16. Under orders of His Highness the **Maharaja** Bahadur (*vide* Hon'ble Prime Minister's No. 424, dated **16th** November 1931) the District Judge of Kashmir has been **invested** with powers of a Judge of the High Court to pass **emergent** orders of attachment before judgment under **Order 38** rules 5 to 12 of the Code of Civil Procedure, on receiving **a plaint**, while the High Court is in Session in Jammu.

(Sd.) RAMNATH SHARMA,

REGISTRAR,

High Court of Judicature, Jammu and Kashmir.

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[1] Published in Government Gazette dated 18th Magher 1988.

THE COMPANIES ACT, 1977.

Act No. XI of 1977.

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THE COMPANIES ACT, 1977.

Act No. XI of 1977.

[*Sanctioned by His Highness the Maharaja Sahib Bahadur per Chief Minister's endorsement No. 8372, dated 11th September, 1920 and letter No. 11529/9 jdl 76, dated 1st November, 920 and State Council Resolution No. 1, dated 8th April, 1925. (Notification 14-L/81)*].

An Act to consolidate and amend the law relating to Trading Companies and other Associations.

WHEREAS it is expedient to consolidate and amend the law relating to Trading Companies and other Associations; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

[1]**1.** Omitted.

2. In this Act unless there is anything repugnant in the subject or context,— **Definitions.**

(*1*) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule annexed to this Act:

(*2*) "company" means a company formed, and registered under this Act or an existing company:

(*3*) "the Court" means the Court having jurisdiction under this Act:

(*4*) "debenture" includes debenture stock:

(*5*) "director" includes any person occupying the position of a director by whatever name called:

(*6*) "District Court" means the principal Civil Court of original jurisdiction in a district:

(*7*) "existing company" means a company formed and registered under any previous law in force relating to the registration of companies:

(*8*) "Insurance Company" means a company that carries on the business of insurance either solely or in common with any other business or businesses:

[1] Short title, extent, and commencement are given and regulated by Act IV of 1977.

(*9*) "manager" includes any person occupying the position of a manager by whatever name called, and whether under a contract of service or not:

(*10*) "memorandum" means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act.

(*11*) "officer" includes any director, manager or secretary but, save in sections 235, 236, and 237, does not include an auditor:

(*12*) "prescribed" means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and as respects the other provisions of this Act prescribed by His Highness:

(*13*) "private company" means a company which

(*i*) by its articles—

(*a*) restricts the right to transfer its shares; and

(*b*) limits the number of its members (exclusive of persons who are in the employ of the company) to fifty; and

(*c*) prohibits any invitation to the public to subscribe for any shares or debentures of the company; and

(*ii*) continues to observe such restrictions, limitations and prohibitions:

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be considered as a single member:

(*14*) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company:

(*15*) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies: and

(*16*) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

Jurisdiction of the Courts.

3. (*1*) The Court having jurisdiction under this Act shall be the High Court:

Provided that His Highness may, by notification in the Jammu and Kashmir Government Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect

of all companies having their registered offices in the district.

(*2*) For the purposes of jurisdiction to wind up companies, expression 'registered office' means the place which has longest been the registered office of the company during the six months immediataly preceding the presentation of the petition for winding up.

(*3*) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition of partnerships exceeding certain number.

4. (*1*) No comapany, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act.

(*2*) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act.

Memorandum of Association.

Mode of forming incorporated company.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

(*i*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

(*ii*) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(*iii*) a company not having any limit on the liability of its members (in this Act termed an unlimited company):

Memorandum of company limited by shares.

6. In the case of a company limited by shares—

(*1*) the memorandum shall state—

(*i*) the name of the company with "Limited" as the last word in its name;

(*ii*) the province in which the registered office of the company is to be situate;

(*iii*) the ob ects of the company;

(*iv*) that the libility of the members is limited:

(*v*) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(*2*) no subscriber of the memorandum shall take less than one share:

(3) each subscribe shall write opposite to his name the numbers of shares he takes.

Memorandum of company limited by guarantee.

7. In the case of a company limited by guarantee—

(*1*) the memorandum shall state—

(*i*) the name of the company, with "Limited" as the last word in its name;

(*ii*) the province in which the registered office of the company is to be situate;

(*iii*) the objects of the company;

(*iv*) that the liability of the member is limited:

(*v*) that each member under takes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributries among themselves, such amount as may be required not exceeding a specified amount:

(*2*) if the company has a share capital—

(*i*) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*ii*) no subscriber of the memorandum shall take less than one share;

(*iii*) each subscriber shall write opposite to his name the number of shares he takas.

Memorandum of unlimited company.

8. In the case of an unlimited company—

(*1*) the memorandum shall state—

(*i*) the name of the company;

(*ii*) the province in which the registered office of the company is to be situate;

(*iii*) the objects of the company;

(*2*) if the company has a share capital—

(*i*) no subscriber of the memorandum shall take less than one share:

(*ii*) each subscriber shall write opposite to his name the number of shares he takes.

Signature of memorandum.

9. The memorandum shall be signed by each subscriber in the presence of at least one witness who shall attest the signature.

Resolution on altration of memrandum,

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the mode and to the extent for which express provision is made in this Act.

Name of company and change of name.

11. (*1*) A company shall not be registered by a name identical with that by which a company in existence is already registerred, or so nearly resembling that name as to be calculated to deceive, except, where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(*2*) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existance is previously registered. or so nearly resembling it as to be calculated to deceive, the first mentioned company may, with the sanction of the registrar, change its name.

(*3*) A company shall not be registered by a name which contains any of the following words, namely,—"Crown," "Emproor," "Empire," "Empress," "Imperial" "King", "Queen" "Royal," "State", "Durbar" or words expressing or implying the sanction, approval or patronage of the Crown or the Government of India or a Local Government of British India, or of His Highness except where the Governor General in Council, or His Highness signifies his consent to the use of such words as part of the name of the company by order in writing under the hand of one of the Secretaries to Government of India, or one of the Ministers of His Highness:

Provided that nothing in this sub-section shall apply to companies registered before the commencement of this Act.

(*4*) Any company may, by special resolution and subject

to the approval of His Highness signified in writing, under the hand of one of the Ministers of His Highness, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Alteration of memorandum.

12. (1) Subject to the provisions of this act, a company may, by special resolution, alter the provisions of its memorandum so as to change the place of the registered office from one part of the State to another, or with respect to the objects of the company, so far as may be required to enable it—

(a) to carry on its business more economically or more efficiently : or

(b) to attain its main purpose by new or improved means ; or

(c) to enlarge or change the local area of its operations ; or

(d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company ; or

(e to restrict or abandon any of the objects specified in the memorandum.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

(a) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration, and

(b) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court :

Provided that the Court may, in the case of any person

or class, for special reason, dispense with the notice required by this section.

Power of Court when confirming alteration.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

Exercise of discretion by Court.

14. The Court shall, in exercising its discretion under section 12 and 13, have regard to the rights and interests of the members of company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the procedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

Procedure on confirmation of the alteration.

15. (*1*) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand; and the certificate shall he conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(*3*) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

Effect of failure to register within three months.

16. No such altertion shall have any operation until registration thereof has been duly effected in accordance with the provisions of section 15, and if such registration is not effected within three months next after the date of the order of the Court confirming the alteration, or within such further time as may be allowed by the Court in accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at expiration of such period of three months or such further time, as the case may be, become absolutely null and void :

Provided that the Court may, on sufficint cause shown, revive the order on appiication made within a period of one month.

Articles of Association.

Registration of articles.

17. (*1*) There may, in the case of company limited by shares, and there sha l, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(*2*) Articles of association may adopt a'l or any of the regulations contained in Table A in the First Schedule.

(*3*) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, sha l state the amount of share capital with which the company proposes to be registered.

(*4*) In the case of an unlimited company or a company limited by guarantee, if the company has not a share capital, the articles shall state the number of members with which the company proposes to be registered, for the purposes of enabling the registrar to determine the fees payable on registration.

Application of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registerd, or, if articles are registered in so far as the articles do not exclude or modify the regulations in table A in the First Schedule, those regulations shall, so for as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and signature of articles.

19. Articles shall—

(*a*) be printed ;

(*b*) be divided into paragraphs numbered consecutively ; and

(*c*) be signed by each subscriber of the memorandum of association in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution.

20. (*1*) Subject to the provisions of this Act to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles ; and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

General Provisions.

Effect of memorandum and articles.

21. (*1*) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs, and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(*2*) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Registration of memorandum and articles.

22. The memorandum and the articles (if any) shall be filed with the registrar.

Effect of registration.

23. (*1*) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a commonseal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation.

24. (*1*) A cerificate of incoporation given by the registrar in respect of any association shall be conclusive evidence that all the requirement of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under this Act.

(*2*) A declaration by an advocate, or pleader entitled to appear before the High Court who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be filed with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

25. (*1*) Every company shall send to every member, at his request, and on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

Associations not for Profit.

Power to dispense with "Limited" in name of charitable and other companies.

26. (*1*) Where it is proved to the satisfaction of His Highness that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, scienec [1][religion], charity, or any other useful object and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, His Highness may, by licence under the hand of one of his Ministers, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly.

(*2*) A licence by His Highness under this section may be granted on such conditions and subject to such regulations as His Highness thinks fit, and those conditions and regulations shall be binding on the association, and shall, if His Highness so directs, be inserted in the memorandum and articles, or in one of those documents.

(*3*) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name and of publishing its name, and of filing lists of members and directors and managers with the registrar.

(*4*) A licence under this section may at any time be revoked by His Highness and upon revocation, the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by the section:

Provided that, before a licence is so revoked, His Highness shall give to the association notice in writing of his intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

[1]In section 26 (1) word "religion" added after "Science" by Act V of 1988, published in Government Gazette dated 18th Mar 1988.

Companies limited by Guarantee.

Provision as to companies limited by guarantee.

27. (*1*) In the case of a company limited by guarantee and not having a share capital and registered after the commencement o. this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profit of the company otherwise than as a member shall be void.

(*2*) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

SHARE CAPITAL, REGISTRATION OF UNLIMITED COMPANY AS LIMITED AND UNLIMITED LIABILITY OF DIRECTORS.

Distribution of Share Capital.

Nature of shares.

28. (*1*) The shares or other interest of any member in a company shall be moveable property, transferable in manner provided by the articles of the company.

(*2*) Each share in a company having a share capital shall be distinguished by its appropriate number.

Certificate of shares or stock.

29. A certificate, under the common seal of the company specifying any shares or stock held by member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

Definition of "member"

30. (*1*) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(*2*) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, shall be a member of the company.

Register of members.

31. (*1*) Every company shall keep in one or more books a register of its members and enter therein the following particulars:—

(*i*) the names and addresses, and the occupations, if any, of the members, and, in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*ii*) the date at which each person was entered in the register as a member;

(*iii*) the date at which any person ceased to be a member.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to fine not exceeding fifty rupees for every day during which the default continues; and officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Annual list of members and summary.

32. (*1*) Every company having a share capital shall once at least in every year make a list of all persons who, on the day of the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or (in the case of the first return) of the incorporation of the company.

(*2*) The list shall state the names, addresses, and occupations of all the past and present members therein mentioned and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or (in the case of the first return) of the incorporation of the company by persons who are still members and persons who have ceased to be members respectively and the dates of registration of the transfers, and shall contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars:—

(*a*) the amount of the share capital of the company, and the number of the shares into which it is divided;

(*b*) the number of shares taken from the commencement of the company up to the date of the return;

(*c*) the amount called up on each share;

(*d*) the total amount of calls received;

(*e*) the total amount of calls unpaid;

(*f*) the total amount of the sums (if any) paid by way

of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return ;

(*g*) the total number of shares forfeited ;

(*h*) the total amount of shares or stocks for which share-warrants are outstanding at the da e of the return ;

(*i*) the total amount of share-warrants issued and surrendered respectively s nce the date of the last return ;

(*k*) the number of shares or amount o stock comprised in each share-warrant ;

(*l*) the names and addresses of the persons who at the date of the return are the directors of the company and of the persons (if any) who at the said date are the managers of the company ; and

(*m*) the total amount of debt due from the company in respect of all mortgages and charges which are required to be registered with the registrar under this Act.

(*3*) The above list and summary shall be contained in a separate pa t of the register o members, and shall be completed within seven days after the day of he first only ordinary general meeting in the year, and the company shall forthwith file with the registrar a copy signed by a director or by the manager or the secretary of the company, together with tbe certificate from such director, managar or secretary that the list and summary state the acts as they stood on the day aforesaid.

(*4*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wilfu ly authorises or permits the default shall be liable to the like penalty.

Trusts not to be entered on register.

33. No notice of any trust, expressed, implied or constructive, shall be entered on the register, or be receivable by the Registrar.

Registration of transfer at request of transferor.

34. On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the some conditions as if the application for the entry were made by the transferee.

Transfer by legal representative

35. A transfer of the share or other interest of a deceased member of a company made by his legal representative shall, although the legal representative is not himself a member, be as valid as if he had been a member at the time of the execution of the

instrument of transfer.

Inspection of register of members.

36. (*1*) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act shall during business hours (subject to such reasonable restrictions, as the company in general meeting may impose, so, that not less than two hours in each day be allowed for inspection) be open to the inspection of any member gratis, and to the inspection of any other person on payment of one rupee, or such less sum as the company may prescribe, for each inspection.

(*2*) Any member or other person may require a copy of the register, or of any part thereof, or of the list and summary required by this Act or any part thereof, on payment of six annas for every hundred words or fractional part thereof required to be copied.

(*3*) If any inspection or copy required under this section is refused, the company shall be liable for each refusal to a fine not exceeding twenty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall be liable to the like penalty, and the Court may by order compel an immediate inspection of the register.

Powers to close register

37. A company may, on giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situate, close the register of members for any time or times not exceeding in the whole thirty days in each year

Power of Court to rectify register.

38. (*1*) If—

(*a*) the name of any person is fraudulently or without sufficient cause entered in or omitted from the register of members of a company;

(*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.

(*2*) The Court may either refuse the application or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved, and may make such order as to costs as it in its discretion thinks fit.

(*3*) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register, whether the question arises between members or alleged members, or between members or alleged members on the one hand and the company on the other hand; and generally may decide any question necessary or expedient to be decided for rectification of the register:

Provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal from the decision on such an issue shall lie in the manner directed by the Code of Civil Proccdure, on the grounds mentioned in section 100 of that Code.

Notice to registrar of rectification of register.

39. In the case of a company required by this Act to file a list of its members with the registrar, the Court, when making an order for rectification of the register, shall, by its order, direct notice of the rectification to be filed with the registrar.

Register to be evidence.

40. The register of members shall be *prima facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Power for company to keep branch register in the United Kingdom or British India.

41. (*1*) A company having a share capital may, if so authorised by its articles, cause to be kept in the United Kingdom or British India a branch register of members in this Act called a British register or British Indian register, as the case may be.

(*2*) The company shall, within one month from the date of the opening of any British register, or British Indian register, as the case may be, file with the registrar notice of the situation of the office where such register is kept and, in the event of any change in the situation of such office or of its discontinuance, shall within one month from the date of such change or discontinuance, as the case may be, file notice of such change or discontinuance.

(*3*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Regulations as to British register.

42. (*1*) A British or British Indian register shall be deemed to be part of the company's register of members (in this section called the principal register).

(*2*) It shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in

some newspapers circulating in the locality wherein the British or British Indian register is kept.

(3) The company shall transmit to its registered office in the State a copy of every entry in its British or British Indian register as soon as may be after the entry is made; and shall cause to be kept at such office, duly entered up from time to time, a duplicate of its British or British Indian register, and the duplicate shall, for all the purposes of this Act, be deemed to be part of the principal register.

(4) Subject to the provisions of this section with respect to the duplicate register, the shares registered in the British or British Indian register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a British or British Indian register shall during the continuance of that registration, be registered in any other register.

(5) The company may discontinue to keep any British or British Indian register, and thereupon all entries in that register shall be transferred to the principal register.

(6) Subject to the provisions of this Act, any company may, by its articles, make such regulations as it may think fit respecting the keeping of a British or British Indian register.

Issue of share-warrants to bearer.

43. A company limited by shares, if so authorised by its articles, may, with respect to any fully paid-up shares, or to stock, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares or stock included in the warrant, in this Act termed a share-warrant.

Effect of share-warrant.

44. A share-warrant shall entitle the bearer thereof to the shares or stock therein specified, and the shares or stock may be transferred by delivery of the warrant

Registration of name of bearer of share-warrant.

45. The bearer of a share-warrant shall, subject to the articles of the company, be entitled, on surrendering it for concellation, to have his name entered as a member in the register of members; and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer of a share-warrant in respect of the shares or stock therein specified without the warrant being surrendered and cancelled.

Position of bearer of share-warrant.

46. The bearer of a share-warrant may, if the articles of the company so provide, be deemed to be a member of the company within the

meaning of this Act, either to the full extent or for any purposes defined in the articles, except that he shall not be qualified in respect of the shares or stock specified in the warrant for being a director or manager of the company, in cases where such a qualification is required by the articles.

Entries in register when share-warrant issued.

47. (*1*) On the issue of a share-warrant the company shall strike out of its register of members the name of the member then entered therein as holding the shares or stock specified in the warrant as if he had ceased to be a member, and shall enter in the register the following particulars, namely ;—

(*i*) the fact of the issue of the warrant;

(*ii*) a statement of the shares or stock included in the warrant, distinguishing each share by its number; and

(*iii*) the date of the issue of the warrant.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly and wifully continues or permits the default shall be liable to the like penalty.

Surrender of share-warrant.

48. Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the register of members; and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

Power of company to arrange for different amounts being paid on shares.

49. A company, if so authorised by its articles, may do any one or more of the following things, namely :—

(*1*) make arrangements on the issue of shares for a difference between the share holders in the amounts and times of payment of calls on their shares;

(*2*) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by him although no part of that amount has been called up ;

(*3*) pay divided in proportion to the amount paid up on each share where a larger amount is paid up on some shares than an others,

Power of company limited by shares to alter its share capital.

50. (*1*) A company limited by shares, if so authorised by its articles, may alter the conditions of its memorandum as follows (that is to say), it may—

(*a*) increase its share capitale by the issue of new shares of such amount as it thinks expedient;

(*b*) consolidate and divide all or any of its share capital into shares of larger amount than its exist ng shares;

(*c*) convert all or any of its paid-up shares into stock and re-convert that stock into paid up share of any denomination;

(*d*) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;

(*e*) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

(*2*) The powers conferred by this section with respect to sub-division of shares must be exercised by special resolution.

(*3*) Where any alteration has been made under this section in the memorandum of a company, every copy of the memrandum issued after the date of the alteration shall be in accordance with the alteration.

(*4*) If a company makes default in complying with the requirements of sub-section (3), it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

(*5*) A cancellation of shares in pursuance of this section shall not be deemed to be a reduction of share capital within the meaning of this Act.

51. (*1*) Where a company having a share capital has consolidated and divided its share capital into shares of larger amount than its existing shares or converted any of its shares into stock, or-converted stock into shares, it shall, within fifteen days of the consolidation and division, conversion or re-conversion, file notice with the registrar of the same, specifying the share consolidated and divided, or converted, or the stock re-converted.

Notice to Registrar of consolidation of share capital, conversion of shares into stock, etc.

(*2*) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues, and every officer of the company who knowingly

and w'fully authorises or permits the default shall be liab'e to the like penalty.

Effect of conversion of shares into stock.

52. Where a company having a share capital has coverted any of its shares into stock, and filed notice of the conversion with the registrar, all the provisions of the Act which are applicable to shares only shall cease as to so much of the share capital as is converted into stock; and the register of members of the company, and the list of members to be filed with the registrar, shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares hereinbefore required by this Act.

Notice of increase of share capital of members.

53. (*1*) Where a company having a share capital, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital, and where a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the registrar, in the case of an increase of share capital, within fifteen days after the passing, or in the case of a special resolution the confirmation, of the resolution authorising the increase, and in the case of an increase of members within fifteen days after the increase was resolved on or took place, notice of the increase of capital or members, and the registrar shall record the increase.

(*2*) If a company makes a default in complying with the requirements of this section, it shall be liab'e to a fine not exeeding fifty rupees for every day during which the default continues, and every officer of the ccmpany who knowing and wilfully authorises or permits the default shall be liable to the like penalty.

Reorganization of share capital.

54. (*1*) A company limited by shares may, by special resolution confirmed by an order of the Court, modify the conditions contained in its memorandum so as to reorganize its share capital, whether by the consolidation of shares of different classes or by the division of its shares into shares of different classes:

Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class and confirmed at a meeting of shareholders of that class in the same manner as a special resolutian of the company is required to be confirmed, and every resolution so passed shall bind all shareholders of the class.

(*2*) Where an order is made under this section, a certified

copy thereof shall be filed with the registrar within twenty-one days after the making of the order or within such further time as the Court may allow, and the resolution shall not take effect untill such a copy has been so filed.

Reduction of Share Capital.

55. (*1*) No company limited by shares shall have power to buy its own shares unless the consequent reduction of capital is effected and sanctioned in manner hereinafter provided.

Reduction of share capital.

(*2*) Subject to confirmation by the Court, a company limited by shares, if so authorised by its articles, may by special resolution reduce its share capital in any way, and in particular (without prejudice to the generality of the foregoing power) may—

(*a*) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

(*b*) either with or without extinguishlng or reducing liability on any of its shares, cancel any paid up share capital which is lost or unrepresented by available assets; or

(*c*) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company,

and may, if and so far as is necessary, alter its memorandum by reducing amount of its share capital and of its shares accordingly.

(*3*) A special resolution under this section is in this Act called a resolution for reducing share capital.

56. Where a company has passed and confirmed a resolution for reducing share capital, it may apply by petition to the Court for an order confirming the reduction.

Application to Court for confirming order.

57. On and from the confirmation by a company of a resolution for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital, or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for confirming the reduction, the company shall add to its name, untill such date as the Court may fix, the words "and reduced" as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company:

Addition to name of company of "and reduced".

Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid

share capital or the payment to any share-holder of any paid-up share capital, the Court may, if it thinks expedient, dispense altogether with the addittion of the words "and reduced".

Objection by creditors, and settlement of list of objecting creditors.

58. (*1*) Where the proposed reduction of share capital involves either diminution of liabilty in respect of unpaid share capital, or the payment to any share-holder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at he date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(*2*) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as for as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days, within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting the reduction.

Power to dispense with consent of creditor on security being given for his debt.

59. Where a creditor entered on the list of creditors whose debt or claim is not discharged or determined does not consent to the reduction, the Court may if it thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Court may direct, the following amount (that is to say),—

(*i*) if the company admits the full amount of his debt or claim, or though not admitting it, is willing to provide for it, then the full amount of debt or claim;

(*ii*) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertaincd, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

Order confirming reduction.

60. The Court, if satisfied, with respect to eve y creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has been determined or has been secured, may make an order confirming the reduction on such terms and conditions as it thinks fit.

61. (*1*) The registrar on production to him of an order

Registration of order and minute of reduction.

of the Court confirming the reduction of the share capital of a company, and on the filing with him of a certified copy of the order and of a minute (approved by the Court) showing, with respect to the share capital of the company as altered by the order, the amount of the share capital, the number of shares into which it is to be divided and the amount of each share, and the amouut (if any) at the date of the registration deemed to be paid up on each share, shall register the order and minute.

(2) On the registration, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effeet.

(3) Notice of the registration shall be published in such manner as the Court may direct.

(4) The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

Minute to form part of memorandum.

62. (1) The minute when registered shall be deemed to be substituted for the correspondi..g part of the memorandum of the company, and shall be valid and alterable as if it had been originally contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made, and every office of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Liability of members in respect of reduced shares.

63. (1) A member of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the minute.

Provided that, if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of this Act

with respect to winding up by the Court, to pay the amount of his debt or claim, then—

(*i*) every person who was a member of the company at the date of the registration of the order for reduction and minute, shall be liable to contribute for the payment of the debt, or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be would up on the day before that registration; and

(*ii*) if the company is wound up, the Court on the application of any such creditor and proof of his ignorance as aforesaid, may, if it thinks fit, settle accordingiy a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding up.

(*2*) Nothing in this section shall affect the rights of the contributories among themselves.

Penalty on concealment of name of creditor.

64. If any officer of the company wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or if any officer of the company abets any such concealment or misrepresentation as aforesaid, every such officer shall be punishable with imprisonmeut which may extend to one year or with fine, or with both.

Publication of reasons for reduction.

65. In case of reduction of share capital, the Court may require the company to publish as the Court directs the reasons for reduction, or such other information in regard thereto as the Court may think expedient with a view to give proper information to the public, and, if the Court thinks fit the causes which led to the reduction.

Increase and reduction of share capital in case of a company limited by guarantee having a share capital.

66. A company limited by guarantee and registered after the commencement of this Act may, if it has a share capital and is so authorised by its articles, increase or reduce its share capital in the same manner and subject to the same coditions in and subject to which a company limited by shares may increase or reduce its share capital under the provisions of this Act.

Registration of Unlimited Company as Limited.

Registration of unlimited company as limited.

67. (*1*) Subject to the provisions of this section, any company registered as unlimited may register under this Act as limited, or any

company already registered as a limited company may re-register under this Act, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of, the company before the registration, and those debts, liabilities, obligations and contracts may be en orced in manner provided by Part VIII of this Act in the case of a company registered in pursuance of that Part.

(2) On registration in pursuance of this section, the registrar shall close the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of company; but save as aforesaid, the registration shall take place in the same manner and shall have effect as if it were first registration of the company under this Act.

Power of unlimited company to provide for reserve share capital on re-registration.

68 An unlimited company having a share capital may, by its resolution for registration as a limited company in persuance of this Act do either or both of the following things, namely:—

(*a*) increase the nominal amount of its share capital by increasing the nominal amount of each of its shares, but subject to the condition that no part of the amount by which its capital is so increased shall be capable of being called up except in the event and for the purposes of the company being wound up;

(*b*) provide that a specified portion of its uncalled share capital shall not be capable of being called up except in the event and for the purposes of the company being wound up.

Reserve Liability of Limited Company.

Reserve liability of limited company.

69. A limited company may by special resolution determine that any portion of its share capital which has not been already called up shall not be capable of being called up, except in the event and for the purposes of the company being wound up, and there upon that portion of its share capital shall not be capable of being called up except in the event and for the purposes aforesaid.

Unlimited Liability of Directors.

70. (*1*) In a limited company the liability of the directors

Limited company may have Directors with unlimited liability.

or of any director may, if so provided by the memorandum, be unlimited.

(2) In a limited company in which the liability of any director is unlimited, the directors of the company (if any) and the member who proposes a person for election or appointment to the office of director shall add to that proposal a statement that the liability of the person holding that office will be unlimited and the promoters and officers of the company, or one of them, shall, before the person accepts the office or acts therein, give him notice in writing that his liability will be unlimited.

(3) If any director or proposer makes default in adding such a statement, or if any promoter or officer of the company makes default in giving such a notice, he shall be liable to a fine not exceeding one thousand rupees and shall also be liable for any damage which the person so elected or appointed may sustain from the default, but the liability of the person elected or appointed shall not be affected by the default.

71. (1) A limited company, if so authorised by its articles, may, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or of any director.

Special resolution of limited company of making liability of directors unlimited.

(2) Upon the confirmation of any such special resolution, the provisions thereof shall be as valid as if they had been originaily contained in the memorandum, and a copy thereof shall be embodied in or annexed to every copy of the memorandum issued after the confirmation of the resolution.

(3) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

PART IV.

MANAGEMENT AND ADMINISTRATION.

Office and Name.

72. (1) Every company shall have a registered office to which all communications and notices may be addressed.

Registered office of company.

(2) Notice in writing of the situation of the registered

office, and of any change therein, shall be filed with the registrar, who shall record the some.

(3) If a compay carries on business without complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which it so carries on business.

Publicatin of name by a limited company.

73. Every limited company—

(*a*) shall paint or affix, and keep painted or affixed, its name on the outside of every office or place in which its bnsiness is carried on, in a conspicuous position, in letters easily legible and in English and Urdu characters ;

(*b*) shall have its name engraven in legible characters on its seal ;

(*c*) shall have its name mentioned in legible English and Urdu characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company, and in all bills of exchange, hundis, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts and letters of credit of the company.

Penalties for non-publication of name.

74. (*1*) If a limited company does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a fine not exceeding fifty rupees for not so painting or affixing its name, and for every day during which its name is not so kept painted or affixed, and every officer of the company who knowingly and willfully authorises or permits the default shall be liable to the like penalty.

(2) If any officer of a limited company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any bill-head, letter paper, notice, advertisement or other official publication of the company, or signs or authorises to be signed on behalf of the company any bill of exchange, hundi, promissory note, endorsement, cheque or order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt or letter of credit of the company wherin its name is not mentioned in manner aforesaid, he shall be liable to a fine not exceeding five hundred rupees, and shall further be personally liable to the holder of any such bill of exchange, hundi, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the company.

Publication of authorised as well as subscribed and paid-up capital.

75. (*1*) Where any notice, advertisement or other official publication of a company contains a statement of the amount of the authorised capital of the company, such notice, advertisem nt or other official publication sha l also contain a statement, in an equally prominent position and in equally conspicuous characters, of the amount of the capital which has been subscribed and the amount paid up.

(*2*) Any compony which makes default in complying with the requirements of this section and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding one thousand rupees.

Meetings and Proceedings.

Annual general meeting.

76. (*1*) A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last preceding general meeting, and, if not so held the company and every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundered rupees.

(*2*) When default has been made in holding a meeting of the company in accordance with the provisions of this section, the Court may, on the application of any member of the company, call or direct the calling of a general meeting of the company.

Statutory meetings of company.

77. (*1*) Every company limited by shares and registered after the commencement of this Act shall within a period of six months from the date at which the company is entitled to commence business, hold a general meetings of the members of the company, which shall be called the statutory meeting.

(*2*) The directors shall, at least ten days before the day on which the meeting is held, forward a report (in this Act called "the statutory report.") to every member of the company and to every other person entitled under this Act to receive it.

(*3*) The statutory report shall be certified by not less than two directors of the company or, where there are less than two directors, by the sole director and shall state—

(*a*) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration fo which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid;

(*c*) an abstract of the receipts of the company whether from its share capital or from debentures, and of the payments made thereout, up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipt of the company from shares and debentures and other sources, the payments made there out and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company;

(*d*) the names, addresses and descriptions of the directors, auditors (if any), managers (if any) and secretary of the company;

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, to gether with the particulars of the modification or propo ed modification.

(*4*) The statutory report shall, so far as it relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account, be certified as correct by the auditors (if any) of the company.

(*5*) The directors shall cause a copy of the statutory report, certified as by this section required, to be filed with the registrar forthwith, after the sending thereof to the members of the company

(*6*) Every director of the company who knowingly and wilfully authorises or permits a default in complying with the provisions of sub-section (2) or sub-section (5) shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(*7*) The directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(*8*) The members of the company present at the meeting shall be at liberty to discuss any matters relating to the formation of the company, or arising out of the statutory report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles may be passed.

(*9*) The meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or

subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(*10*) If a petition is presented to the Court in manner provided by Part V for winding up the company on the ground of default in filing the statutory report or in holding the statutory meeting, the Court may, instead of directing that the company be wound up, give directions for the statutory report to be filed or a meeting to be held, or make such other order as may be just.

(*11*) The provisions of this section as to the forwarding and filing to the statutory report shall not apply in the case of a private company

Calling of extraordinary general meeting on requisition.

78. (*1*) Notwithstanding anything in the articles, the directors of a company which has a share capital shall, on the requisition of the holders of not less than one-tenth of the issued share capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to call an extraordinary general meeting of the company.

(*2*) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, each signed by one or more requisitionists.

(3) If the directors do not proceed within twenty-one days from the date of the requisition being so deposited to cause a meeting to be called, the requisitionists, or a majority of them in value, may themselves call the meeting, but in either case any meeting so called shall be held within three months from the date of the deposit of the requisition.

(*4*) If at any such meeting a resolution requiring confirmat on at another meeting is passed, the directors shall forthwith call a further extraordinary general meeting for the purpose of considering the resolution and, if thought fit, of confirming it as a special resolution and, if the directors do not call the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves call the meeting.

(*5*) Any meeting called under this section by the requisitionists shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by directors.

Provisions as to meetings and votes.

79. In default of, and subject to, any regulations in the articles,—

(*i*) a meeing of a company may be called by fourteen

days' notice in writing, served on every member in manner in which notices are required to be served by Table A in the First Schedule ;

(*ii*) five members may call a meeting ;

(*iii*) any person elected by the members present at a meeting may be chairman thereof ; and

(*iv*) every member shall have one vote.

Representation of companies at meetings of other companies of which they are members.

80. A company which is a member of another company may, by resolution of the directors, authorise any of its officials or any other person to act as its representative at any meeting of that other company and the person so authorised shal be entitled to exercise the same powers on behalf of the company which he represents as if he were an individual shareholder of that other company.

Extraordinary and special resolutions.

81. (*1*) A resolution shall be an extraodinary resolution when it has been passed by a majority of not less than three-fourths of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a general meeting of which notice specifying the intention to propose the resolution as an extraordinary resolution has been duly given.

(*2*) A resolution shall be a special resolution when it has been—

(*a*) passed in manner required for the passing of an extraordinary resolution ; and

(*b*) confirmed by a majority of such members entitled to vote as are present in person or by proxy (where proxies are allowed) at a subsequent general meeting, of which notice has been duly given, and held after an interval of not less than fourteen days, nor more than one month, from the date of the first meeting.

(*3*) At any meeting at which an extraordinary resolution is submitted to be passed or a specia resolution is submitted to be passed or confirmed, a declaration of the chairman on a show of hands that the resolution is carried shall, unless a poll is demanded, be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(*4*) At any meeting at which an extraordinary resolution is submitted to be passed or a special resolutiou is submitted to be passed or confirmed, a poll may be demanded by three persons for the time being entitled according to the articles to vote, unless the articles of the company require a demand by such number of such persons not in any case exceeding five, as may be specified in the articles.

(5) In a case where, if a poll is demanded, it may in accordance with the articles be taken in such manner as the chairman may direct, it may, if the chairman so directs, be taken at the meeting at which it is demanded.

(6) When a poll is demanded in accordance with this section, in computing the majority on the poll, reference shall be had to the number of votes to which each member is entitled by the articles of the company.

(7) For the purposes of this section notice of a meeting shall be deemed to be duly given and the meeting to be duly held when the notice is given and the meeting held in manner provided by the articles.

Registration and copies of special and extraordinary resolutions.

82. (1) A copy of every special and extraordinary resolution shall, within fifteen days, from the confirmation of the special resolution or from the passing of the extraordinary resolution as the case may be, be printed or typewritten and filed with the registrar who shall record the same.

(2) Where articles have been registered, a copy of every special resolution for the time being in force shall be embodied in or annexed to every copy of the articles issued after the date of the resolution.

(3) Where articles have not been registered, a copy of every special resolution shall be forwarded in print to any member, at his request, on payment of one rupee or such less sum as the company may direct.

(4) If a company makes default in so filing with the registrar a copy of a special or extraordinary resolution, it shall be liable to a fine not exceeding twenty rupees for every day during which the default continues.

(5) If a company makes default in embodying in or annexing to a copy of its articles or in forwarding in print to a member, when required by this section, a copy of a special resolution, it shall be liable to a fine not exceeding ten rupees for each copy in respect of which default is made.

(6) Every officer of a company who knowingly and wilfully authorises or permits any default by the company in complying with the requirements of this section shall be liable to the like penalty as is imposed by this section on the company for that default.

Mrnutes of proceedings of meetings and Director

83. (1) Every company shall cause minutes of all proceedings of general meeting and of its directors to be entered in books kept for that purpuse.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had,

or by the chairman of the next succeeding meeting, hall be evidence of the proceedings.

(3) Until the contrary is proved every general meeting of the company or meeting of directors in respect of the proceedings whereof minutes have been so made shall be deemed to have been duly called and held, and all proceedings had thereat to have been duly had, and all appointments of directors or liquidators shall be deemed to be valid.

Directors obligatory.

83-A. (*1*) Every company registered after the commencement of this Act shall have at least two directors.

(*2*) The section shall not apply to a private company.

Appointment of directors.

83-B. In default of and subject to any regulations in the articles of a company other than a private company—

(*i*) the subscribers of the memorandum shall be deemed to be the directors of the company until the first directors shall have been appointed;

(*ii*) the directors of the company shall be appointed by the members in general meeting;

(*iii*) any casual vacancy occuring among the directors may be filled up by the directors, but the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last appointed a director.

Restrictions on appointment or advertisment of director.

84. (*1*) A person shall not be capable of being appointed director of a company by the articles, and shall not be named as a director or proposed director of a company in any prospectus issued by or on behalf of the company or in relation to any intended company or in any statement in lieu of prespectus filed by or on behalf of a company, unless before the registration of the articles or the publication of the prospectus, or the filing of the statement in lieu of prospectus as the case may be, he has, by himself or by his agent authorised in writing—

(*i*) signed and filed with the registrar a consent in writing to act as such director, and

(*ii*) save in the case of a company limited by guarantee and not having a share capital, either signed the memorandum for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(*2*) On the application for registration of the memorandum and articles of a company the applicant shall file

with the registrar a list of the persons who have consented to be directors of the company, and, if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding five hundred rupees.

(*3*) This section shall not apply to a private company nor to prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business.

Qualification of director.

85. (*1*) Without prejudice to the restrictions imposed by section 84, it shall be the duty of every director who is by the articles required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the articles.

(*2*) The office of director of a company shall be vacated if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the articles, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification; and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(*3*) If, after the expiration of the said period or shorter time any unqualified person acts as a director of the company, he shall be liable to a fine not exceeding fifty rupees for every day between the expiration of the said period or shorter time and the last day on which it is proved that he acted as a director.

Validity of acts of directors.

86. The acts of a director shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification : Provided that nothing in this section shall be deemed to give validity to acts done by a director after the appointment of such director has been shown to be invalid.

List of directors to be sent to registrar.

87. (*1*) Every company shall keep at its registered office a register containing the names and addresses and the occupations of directors, and file with the registrar a copy thereof, and from time to time file with the registrar notice of any change among its directors or managers.

(*2*) If default is made complying with this section; the company shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contract.

88. (*1*) Contracts on behalf of a company may be made as follows (that is to say) :—

Form of contracts.

(*i*) any contrac which, if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the some manner be varied or discharged ;

(*ii*) any contract which, if made between private persons, would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(*2*) All contracts made according to this section shall be effectual in law, and shall bind the company and its successors and all other parties thereto, their heirs, or legal representatives, as the case may be.

89. A bill of exchange, hundi or promissory note shall be deemed to have been made, drawn, accepted or endorsed on behalf of a company if made, drawn, accepted or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority, express or implied.

Bills of exchange and psomissory notes.

90. A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the State; and every deed signed by such attorney on behalf of the company, and under his seal, where sealing is required, shall bind the compnny, and have the same effect as if it were under its common seal.

Execution of deeds abroad.

91. (*1*) A company whose objects require or comprise the transaction of business beyond the limits of the State, may, if authorised by its articles, have for use in any territory, district or place not situate in the State, an official seal which shall be a facsimile of the common seal of the company, with the addition on its face of the name of every territory, district or place where it is to be used.

Power for company to have official seal for use abroad.

(*2*) A company having such an official seal may, by writing under its common seal, authorise any person appoint-

ed for the purpose in any territory, district or place not situate in the State to affix the same to any deed or other document to which the company is party in that territory, district or place.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing under his hand, on the deed or other document to which the seal is affixed, certify the date and place of affixing the same.

(5) A deed or other document to which an official seal is duly affixed shall bind the company as if it had been sealed with the common seal of the company.

91-A. (1) Every director who is directly or indirectly concerned or interested in any contract or arrangemet entered into by or on behalf of the company shall disclose the nature of his interest at the meeting of the directors at which the contract or arrangement is determined on, if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest or the making of the contract or arrangement :

Disclosure of interest by director.

Provided that a general notice that a director is a member of any specified firm or company and is to be regarded as interested in any subsequent transaction with such firm or company, shall as regard any such transaction be sufficient disclosure within the meaning of this sub-section, and after such general notice, it shall not be necessary to give any special notice relating to any particular transaction with such firm or company.

(2) Every director who cotravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

91-B. No director shall, as a director, vote on any contract or arrangement in which he is either directly or indirectly concerned or interested ; and if he does so vote, his vote shall not be counted :

Prohibition of voting by interested director.

Provided that the directors or any of them may vote on any contract of indemenity against any loss which they or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.

(2) Every director who contravenes the provisions of sub-section (1) shall be liable to a fine not exceeding one thousand rupees.

[1][(3) This section shall not apply to a private company].

Disclosure to members in case of contract appointing a manager.

91-C. (1) Where a compay enters into a contract for the appointment of a manager of the company in which contract any director of the company is directly or indirectly concerned or interested, or varies any such existing contract, the company shall send an abstract of the terms of such contract or variation, as the case may be together with a memorandum clearly indicating the nature of the interest of the director in such contract, or in such variation, to every member ; and the contract shall be open to the inspection of any member at the registered office of the company.

(2) If a company makes default in complying with the requirements of sub-section (1), it shall be liable to a fine not exceeding one thousand rupees ; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contracts by agents of company in which company is undisclosed principal.

91-D. (1) Every manager or other agent of a company other than a private company who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it has been made.

(2) Every such manager or other agent shall, forthwith deliver the memorandum aforesaid to the company, and such memorandum shall be filed in the office of the company and laid before the directors at the next directors' meeting.

(3) If any such manager or other agent makes default in complying with the requirements of this section :—

(*a*) the contract shall, at the option of the company, be void as against the company ; and

(*b*) such manager or other agent shall be liable to a fine not exceeding two hundred rupees.

Prospectus.

92. (1) Every prospectus issued by or on behalf of a

[1]Section 91-B (3) added by Act 5 of 1988 published in Government Gazette dated 18th Mar 1988.

Filing of propectus.

company or in relation to any intended company shall be dated and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(*2*) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorised in writing, sha l be filed for registration with the registrar on or be'ore the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for reg istration.

(*3*) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(*4*) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(*5*) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liab'e to a fine not exceeding fifty rupees for every day from the date of the issue of the prospectus until a copy thereof is so filed.

93. (*1*) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, shall state—

Specific requirements as to particulars of prospectus.

(*a*) the contents of the memorandum, with the names, descriptions and addresses of the signatories and the number of shares subscribed for by them respectively ; and the number of founders or management or deferred shares (if any) and nature and extent of the interest of the holders in the property and profits of the company ; and

(*b*) the number of shares (if any) fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors ; and

(*c*) the names, descriptions and addresses of the directors or proposed directors and of the managers or proposed managers (if any) ; and

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share ; and in the case of a second or subsequent offer of shares the amount offered for subscription on each previous allotment made within the two preceding years, and the amouut actually allotted, and the amount (if any) paid on the shares so allotted ; and

(*e*) the number and amount of shares and debentures

which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued ; and

(*f*) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures to the vendor, and where there is more than one separate vendor or the company is a sub-purchaser, the amount so payable to each vendor : Provided that where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors ; and

(*g*) the amount (if any) paid or payable as purchase-money in cash, shares or debentures for any such property as aforesaid, specifying the amount (if any) payable for goodwill ; and

(*h*) the amount (if any) paid within the two preceding years or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission : Provided that it shall not be necessary to state the commission payable to sub-underwriters ; and

(*i*) the amount or estimated amount of preliminary expenses ; and

(*k*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment ; and

(*l*) the dates of and parties to, every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected : Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or to any contract entered into more than two years before the date of issue of the prospectus; and

(*m*) the names and addresses of the auditors (if any) of the company ; and

(*n*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in

the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company ; and

(*o*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum, or the signatories thereto, and the number of shares subscribed for by them.

(3) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(4) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors, or proposed directors, and of managers or proposed managers, and the amount or estimated amount of preliminary expenses shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(5) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

94. For the purposes of section 93 every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

Meaning of "vendor" in section 93.

(*a*) the purchase-money is not fully paid at the date of issue of the prospectus ; or

(*b*) the purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus ; or

(*c*) the contract depends for its validity or fulfilment

on the result of that issue

Application of section 93 to the case of property taken on lease.

95. Where any of the property to be acquired by the company is to be taken on lease, section 93 shall apply as if the expression 'vendor" included the lessor, and the expression. " purchase money " included the consideration for the lease, and the expression " sub-purchaser " included a sub-lessee.

Invalidity of certain conditions as to waiver or notice.

96. Any conditions requiring or binding any applicant for shares or debentures to waive compliance with any requirements of section 93, or purporting to effect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

Saving in certain cases of non-compliance with section 93.

97. In the event of non-compliance with any of the requirements of section 93, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognisant thereof ; or

(*b*) the non-compliance arose from an honest mistake of fact on his part :

Provided that, in the event of non-compliance with the requirments contained in clause (n) of sub-section (I) of section 93, no such director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

Obligations of companies where no prospectus is issued.

98. (*1*) A company which does not issue a prospectus on or with reference to its formation shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the registrar a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of tne company or by his agent authorised in writing, in the form and containing the particulars set out in the Second Schedule.

(*2*) This section shall not apply to a private company or to a company which has allotted any shares or debenture before the commencement of this Act or, in so far as it relates to the allotment of shares, to a company limited by guarantee and not having a share capital.

Restriction on alteration of terms mentioned in prospectus or statement in lieu of prospectus.

99. A company shall not, at any time, vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of the company in general meeting.

Liability for statements in prospectus.

100. (*1*) Where a prospectus invites persons to subscribe for shares in or debentures of a company every person who is a director of the company at the time of the issue of he prospectus, and every person who has authorised the naming of himself and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorised the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for all loss or damage they may have sustained by reason of any misleading or untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein, or issued therewith, unless it is proved—

(*a*) with respect to every misleading or untrue statement not purporting to the made on the authority of an expert or of a public official document or statement that he had reasonable ground to believe and did, up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement fairly represented the facts or was true ;

(*b*) with respect every to misleading or untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation : Provided that the director, person named as director, promoter or person who authorised the issue of the prospectus shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to belive that the person making the statement, report or valuation was competent to make it ; and

(*c*) with respect to every misleading or untrue statement purporting to be a statement made by an official persons or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document :

or unless it is proved—

(*i*) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued withont his authority or consent ; or

(*ii*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he

forthwith gave a reasonable public notice that it was issued without his knowledge or consent ; or

(*iii*) that, after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any misleading or untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reasons therefor.

(*2*) Where a company existing at the commencement of this Act has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorised the issue of the prospectus, or has adopted or ratified it.

(*3*) Where the prospectus contains the name of a person as a director of company, or as having agreed to become a director thereof, and he has not consented to become a director or has withdrawn his consent before the issue of the prospectus, and has not authorised or consulted to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorised the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or in defending himself against any suit or legal proceedings brought against him in respect thereof.

(*4*) Every person who by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(*5*) For the purposes of this section—

(*a*) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or the portion thereof containing the misleading or untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company ;

(*b*) the expression "expert" includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.

Ailotment.

101. (*1*) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with namely :—

Restriction as to allotment.

(*a*) the amount (if any) fixed by the memorandum or articles and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment, or

(*b*) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscriptions,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received in cash by the company.

(*2*) The amount so fixed and named, and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(*3*) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(*4*) if the conditions aforesaid have not been complied with on the expiration of one hundred and twenty days after the first issue of prospectus, all money received from applicants for shares shall be forthwith repaid to the without interest, and, if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the Directors of the company shall be jointly and severally liable to repay that money with interest at the rate of seven per cent. per annum from the expiration of the one hundred and thirtieth day:

Provided that a director shall not be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(*5*) Any condition requiring or binding any applicant for shares to waive compliance with any requirements of this section shall be void.

(*6*) This section, except sub-section (*3*) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

(*7*) In the case of the first allotment of share capital payable in cash of a company which does not issue any invitation to the public to subscribe for its shares, no allotment shall be made unless the minimum subscription (that is tosay),—

(*a*) the amount (if any) fixed by the memorandum or

articles and named in the statement in lieu of prospectus as the minimum subscription upon which the directors may proceed to allotment ; or

(*b*) if no amount is so fixed and named, the whole amount of the shares capital other than that issued or agreed to be issued as fully or partly paid up otherwise than in cash ; has been subscribed and an amount not less than five per cent. of the nominal amount of each share payable in cash has been paid to and received by the company.

(*8*) Sub-section (*7*) shall not aply to a private company or to a company which has allotted any shares or debentures before the commencement of this Act.

Effect of irregular allotment.

102. (*1*) An allotment made by a company to an applicant in contravention of the provisions of section 101 shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(*2*) If any director of a company knowingly contravenes or permits or authorises the contravention of any of the provisions of section 101 with respect to allotment, he shall be liable to compensate the company and the allottee respectively for any loss, damages or costs which the company or the allottee may have sustained or incurred thereby : Provided that proceedings to recover any such loss, damages or costs shall not be commenced after the expiration of two years from the date of the allotment

Restrictions on commencement of business.

103. (*1*) A company shall not commence any business or exercise any borrowing powers unless —

(*a*) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription ; and

(*b*) every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription or, in the case of a company which does not issue a prospectus inviting the public to subscribe or its shares, on the shares payable in cash ; and

(*c*) there has been filed with the registrar a duly verified declararation by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with ; and

(*d*) in the case of a company which does not issue a prospectus inviting the public to subscribe for its shares, there has been filed with the registrar a statement in lieu of prospectus.

(*2*) The registrar shall, on the filing of a duly verified declaration, in accordence with the provisions of this section, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled :

Provided that, in the case of a company which does not issue a prospectus inviting the public to subscribe for its share, the registrar shall not give such a certificate unless a statement in lieu of prospectus has been filed with him.

(*3*) Any contract made by a company before the date at which it is entitled to commence business shall be provisional on y, and shall not be binding on the company until that date, and on that date it shall become binding.

(*4*) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of any shares and debentures or the receipt of any money payable on application for debentures.

(*5*) If any company commences business or exercises borrowing powers in contravention of this section every person who is responsible for the contravention shall without prejudice to any other liability, be liable to a fine not exceeding five hundred rupees for every day during which the contravention continues.

(*6* Nothing in this section shall apply to a private company, or to a company registered before the commencement of this Act, which does not issue a prospectus inviting the bublic to subscribe for its shares or, in so far as its provisions relate to shares, to a company limited by guarantee and not having a share capital.

104 (1) Whenever a company having a share capital makes any allotment of its shares, the company shall, within one month thereafter,—

Return as to allotment.

(*a* file with the registrar a return of the allotments, stating the number and nominal amount of the shares comprised in the allotment, the name, addresses and descriptions of the allottees and the amount (if any) paid or due and payble on each share : and

(*b*) in the case of shares allotted as fully or partly paid up otherwise than in cash, produce for the inspection and examination of the registrar a contract in writting constituting the title of the allottee to the allotment together

with any contract of the sale, or for services or other consideration in respect of which that allotment was made, such contracts being duly stamped, and file with the registrar copies verified in the prescribed manner of all such contracts and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted.

(2) Where such a contract as above-mentioned is not reduced to writing, the company, shall, within one month after the allotment, file with the registrar the prescribed particulars of the contract, stamped with the same stamp-duty as would have been payable if the contract had been reduced to writing, and these particulars shall be deemed to be an instrument within the meaning of the Stamp Act and the registrar may, as a condition of filing the particulars, require that the duty payable thereon be adjudicated under section 31 of that Act.

(3) If default is made in complying with the requirements of this section, every officer of the company who is knowingly a party to the default shall be liable to a fine not exceeding five hundred rupees for every day during which the default continues:

Provided that in case of default in filing with the registrar within one month after the allotment any document required to be filed by this section, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the commission to file the document was accidental or due to inadvertence or that on other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such a period as the Court may think proper.

Commissions and Discounts.

Power to pay certain commissions and prohibition of payment of all other commissions, discounts etc.

105. (1) It shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company if the payment of the commission is authorised by the articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised, and if the amount or rate per cent. of the commission paid or agreed to be paid is,—

(a) in the case of shares offered to the public for subs-

cription, disclosed in the prospectus; or

(*b*) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or in a statement in the prescribed form signed in like manner as a statement in lieu of prospectus and filed with the registrar and where a circular or notice not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice.

(*2*) Save as aforesaid, no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring, or agreeing to procure, subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase-money or contract price, or otherwise.

(*3*) Nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from a company shall have, and shall be deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

Statement in balance sheet as to commissions and discounts

106. Where a company has paid any sums by way of commission in respect of any shares or debentures, or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance-sheet of the company until the whole amount thereof has been written off.

Payment of Interest out of Capital.

Power of company to pay interest out of capital in certain cases.

107. Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital

as is for the time being paid up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(*1*) no such payment shall be made unless the same is authorised by the articles or by special resolution;

(*2*) no such payment, whether authorised by the articles or by special resolution, shall be made without the previous sanction of His Highness, which sanction shall be conclusive evidence, for the purposes of this section, that the share of the company, in respect of which such sanction is given, have been issued for a purpose specified in this section;

(*3*) before sanctioning any such payment, His Highness may, at the expense of the company, appoint a person to inquire and report to His Highness as to the circumstances of the case, and may, before making the appointment require he company to give security for the payment of the costs of the inquiry;

(*4*) the payment shall be made only for such period as may be determined by His Highnsss; and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(*5*) the rate of interest shall in no case exceed four per cent. per annum or such lower rate as His Highness may, by notification in the Gazette, prescribe;

(*6*) the pavment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;

(*7*) the accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

Certificates of Shares, etc.

Limitation of time for issue of certificates

108. (*1*) Every company shall, within three months after the allotment of any of its shares, debentures or debenture stock, and within three months after the registration of the transfer of any such shares, debentures or debenture stock, complete and have ready for delivery the certificates of all shares, the debentures, and the certificates of all debenture stock allotted or transferred, unless the conditions of issue of the shares, debentures or debenture stock otherwise provide.

(2) If default is made in complying with the requirements of this section, the company, and every officer of the company who is knowingly a party to the default, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to Mortgages, Charges, etc.

109. Every mortgage or charge created after the commencement of this Act by a company and being either—

Certain mortgages and charges to be void if not registered.

(*a*) a mortgage or charge for the purpose of securing any issue of debentures; or

(*b*) a mortgage or charge on uncalled share capital of the company; or

(*c*) a mortgage or charge on any immoveable property wherever situate, or any interest therein; or

(*d*) a mortgage or charge on any book debts of the company; or

(*e*) a floating charge on the undertaking or property of the company;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge together with the instrument (if any) by which the mortgage or charge is created or evidenced, or a copy thereof verified in the prescribed manner, or filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage or charge becomes void under this section, the money secured thereby shall immediately become payable :

Provided that,—

(*i*) in the case of a mortgage or charge created out of the State, comprising, solely property situate outside the State, twenty-one days after the date on which the instrument or copy could, in the course of post, and if despatched with due diligence, have been received in the State shall be substituted for twenty-one days after the date of the creation of the mortgage or charge, or the time within which the particulars and instrument or copy are to be filed with the registrar; and

(*ii*) where the mortgage or charge is created in the

State but comprises property outside the State, the instrument creating or purporting to create the mortgage or charge or a copy thereof verified in the prescribed manner, may be filed for registration, notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate ; and

(*iii*) where a negotiable instrument has been given to secure the payment of any book debts of a company, the deposit of the instrument for the purpose of securing an advance to the company shall not, for the purposes of this section, be treated as a mortgage or charge on those book debts ; and

(*iv*) the holding of debentures entitling the holder to a charge on immoveable property shall not be deemed to be an interest in immoveable property.

Particulars in case of series of debentures entitling holders *pari passu*.

110. Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture-holders of that series are entitled *pari passu* is created by a company, it shall be sufficient for the purposes of section 109 it there are filed with the registrar within twenty-one days after the execution of the deed, containing the charge or, if there is no such deed, after the execution of any debentures of the series, the following particulars :—

(*a*) the total amount secured by the whole series and

(*b*) the dates of the resolutions authorising the issue of the series and the date of the covering deed (if any) by which the security is created or defined ; and

(*c*) a general description of the property charged ; and

(*d*) the names of the trustees (if any) for the debenture-holders ;

together with the deed or a copy thereof verified in the prescribed manner containing the charge, or if there is no such deed, one of the debentures of the series, and the registrar shall, on payment of the prescribed fee, enter those particulars in the register :

Provided that, where more than one issue is made of debentures in the series, there shall be filed with the registrar for entry in the register particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

Particulars in case of commission, etc., on debentures.

111. Where any commission, allowance or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing

to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions whether absolute or conditional, for any such debentures, the particulars required to be filed for registration under sections 109 and 110 shall include particulars as to the amount or rate per cent. of the commission, discount or allowance so paid or made, but an ommission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security or any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

Register of mortgages and charges.

112. (*1*) The registrar shall keep, with respect to each company, a register in the prescribed form of all the mortgages and charges created by the company after the commencement of this Act and requiring registration under section 109, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or person entitled to the charge.

(*2*) After making the entry required by sub-section (*1*), the registrar shall return the instrument (if any) or the verified copy thereof, as the case may be, filed in accordance with the provisions of section 109 or section 110, to the person filing the same.

(*3*) The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee, not exceeding one rupee for each inspection.

Index to register of mortgages and charges.

113. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act.

Certificate of registration.

114. The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in persuance of section 109, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of section 109 to 112 as to registration have been complied with.

Endorsement of certificate of registration on debenture or certificate of debenture stock.

115. The company shall cause a copy of every certificate of registration, given under section 114, to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment

of which is secured by the mortgage or charge so registered:

Provided that nothing in this section shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debentures or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

Duty of company and right of interested party as regards registration.

116. (*1*) It shall be the duty of the company to file with the registrar, for registration, the prescribed particulars of every mortgage or charge created by the company and of the issues of debentures of a series requiring registration under section 109, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

(*2*) Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the registrar on the registration.

Copy of instrument creating mortgage or charge to be kept at registered office.

117. Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under section 109, to be kept at the registered office of the company: Provided that, in the case of a series of uniform debenture, a copy of one such debenture shall be sufficient.

Registration of appointment of receiver.

118. (*1*) If any person obtains an order for the appointment of a receiver of the property of a company, or appoints such a receiver under any powers contained in any instrument, he shall, within fifteen days from the date of order or of the appointment under the powers contained in the instrument file notice of the fact with the registrar, and the Registrar shall, on payment of prescribed fee, enter the fact in the register of mortgages and charges.

(*2*) If any person makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Filing of accounts of receivers.

119. (*1*) Every receiver of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall once in every half-year while he remains in possession, and also on ceasing to act as receiver, file with the registrar an abstract, in the prescribed form, so

his receipts and payments during the period to which the abstract relates and shall also, on ceasing to act as receiver, file with the registrar notice to that effect, and the registrar shall enter the notice in the register of mor gages and charges.

(2) Every receiver who makes default in complying with the provisions of this section shall be liable to a fine not exceeding five hundred rupees.

Rectification of register of mortgages.

120. The Court, on being satisfied that the omission to register a mortgage or charge within the time required by section 109, or that the omission or misstatment of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or share-holders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the Court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified, and may make such order as to the costs of the application as it thinks fit.

Entry of satisfaction.

121. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall, if required, furnish the company with a copy thereof

Penalties.

122. (*1*) If any company makes default in filing with the registrar for registration the particulars—

(*a*) of any mortgage or charge created by the company or ;

(*b*) of the issues of debentures of a series,

requiring registration with the registrar under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every officer of the company or other person who is knowingly a party to the defualt, shall on conviction be liable to a fine not exceeding five hundred rupees for every day during which the default continues.

(*2*) Subject as aforesaid. if any company makes default in complying with any of the requirements of this Act as to the registration with the registrar of any mortgage or charge created by the company, the company, and every officer of the company who knowingly and wilfully authorises or permits

the default shall, without the prejudice to any other liability be liable on conviction to a fine not exceeding one thousand rupees.

(3) If any person knowingly and wilfully authorises or permits the delivery of any debenture or certificate of debenture stock requiring registration with the registrar under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on conviction to a fine not exceeding one thousand rupees.

Company's register of mortgages.

123. (1) Every limited company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge and (except in the case of security to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager or other officer of the company knowingly and wilfully authorises or permits the omission of any entry required to be made in pursuance of this section, he shall be liable to a fine not exceeding five hundred rupees.

Right to inspect copies of instrument creating mortgages and charges, and company's register of mortgages.

124. (1) The copies kept at the registered office of the company in pursuance of section 117 of instruments creating any mortgage or charge requiring registration under this Act with the registrar, and the register of mortgages kept in pursuance of section 123 shall be open at all reasonable times to the inspection of any creditor or member of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding one rupee for each inspection, as the company may prescribe.

(2) If inspection of the said copies or register is refused, the company shall be liable to a fine not exceeding fifty rupees and a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who khowingly authorises or permits the refusal shall incur the like penalty, and in addition to the above penalty, the Court may by order compel an immediate inspection of the copies or register.

Right to inspect the register of debenture-holders and to have copies of trust-deed.

125. (1) Every register of holders of debentures of a company shall, except when closed in accordance with the articles during such period or periods (not exceeding in the whole thirty days in any year) as may

be specified in the articles, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may in general meeting impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*2*) A copy of any trust-deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request on payment in the case of a printed trust-deed of the sum of one rupee or such less sum as may be prescribed by the company, or, where the trust-deed has not been printed, on payment of six annas for every one hundred words or fractional part thereof required to be copied.

(*3*) If inspection is refused, or a copy is refused or not forwarded, the company shall be liable to a fine not exceeding fifty rupees and to a further fine not exceeding twenty rupees for every day during which the refusal continues, and every officer of the company who knowingly authorises or permits the refusal shall incure the like penalty, and the Court may by order compel an immediate inspection of the register.

Debentures and Floating Charges.

Perpetual debentures.

126. A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

Power to re-issue redeemed debentures in certain cases.

127. (*1*) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless the articles or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power to keep the debentures alive for the purposes of re-issue, and where a company has purported to exercise such a power, the company shall have power, and shall be deemed always to have had power, to re-issue the

debentures, either by re-issuing the same debentures or by issuing other debentures in their place, and upon such re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue, they have either before or after the commencement of this Act been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a company has, either before or after the commencement of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by a company, whether the re-issue or issue was made, before or after the commencement of this Act shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued:

Provided that any person lending money on the security of a debenture re-issued under this section, which appear to be duly stamped, may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence might have discovered, that the debenture was not duly stamped, but in any such case the company shall be liable to pay the proper stamp-duty and penalty,

(5) Nothing in this section shall prejudice—

(*a*) the operation of any decree or order of a Court of competent jurisdiction pronounced or made on or before the date of coming into force of this Act as between the parties to the proceedings in which the decree or order was made, and any appeal from any such decree or order shall be decided as if this Act had not been passed: or

(*b*) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same.

128. A contract with a company to take up and pay

Specific performance of contract to subscribe for debentures.

for any debentures of the company may be enforced by a decree for specific performance.

Payments of certain debts out of assets subject to floating charge in priority to claims under the charge.

129. (*1*) Where either a receiver is appointed on behalf of the holders of any debentures of a company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then if the company is not at the time in course of being wound up, the debts which in every winding up are under the provisions of Part V relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

(*2*) The periods of time mentioned in the said provisions of Part V shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

(*3*) Any payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

Statements, Books and Accounts.

Company to keep proper books of account.

130. Every company shall keep proper books of accouut in which shall be entered full, true and complete accounts of the affairs and transactions of the company.

Annual balance-sheet.

131. (*1*) Every company shall, once at least in every year and at intervals of not more than fifteen months, cause the accounts of the company to be balanced and a balance-sheet to be prepared.

(*2*) The balance-sheet shall be audited by the auditor of the company as hereinafter provided, and the auditor's report shall be attached thereto, or there shall be inserted at the foot thereof a reference to the report, and the report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

(*3*) Every company other than a private company shall send a copy of such balance-sheet so audited to the registered address of every member of the company at least seven days before the meeting at which it is to be laid before the members of the company, and shall deposit a copy at the registered office of the company for the inspection of the

members of the company during a period of at least seven days before that meeting.

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one thousand rupees, and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty.

Contents of balance-sheet.

132. (1) The balance-sheet shall contain a summary of the property and assets and of the capital and liabilities of the company giving such particulars as will disclose the general nature of those liabilities and assets and how the value of the fixed assets has been arrived at.

(2) The balance-sheet shall be in the form marked F in the Third Schedule or as near thereto as circumstances admit.

Authentication of balance-sheet.

133. (1) Save as provided by sub-section (2) the balance-sheet shall,—

(i) in the case of a banking company, be signed by the manager (if any) and, where there are more than three directors of the company by at least three of those directors and, where there are not more than three directors, by all the directors;

(ii) in the case of any other company, be signed by two directors or, when there are less than two directors, by the sole director and by the manager if any, of the company.

(2) When the total number of directors of the company for the time being in the State is less than the number of directors whose signatures are required by sub-section (1), then the balance-sheet shall be signed by all the directors for the time being in the State, or, if there is only one director for the time being in State, by such director, but in such a case there shall be subjoined to the balance-sheet a statement signed by such directors or director explaining the reason for non-compliance with the provisions of sub-section (1).

(3) If any copy of a balance-sheet which has not been signed as required by this section is issued, circulated or published, the company and every officer of the company who is knowingly a party to the default shall be punishable with fine which may extend to five hundred rupees.

Copy of balance-sheet and auditor's report to be forwarded to the registrar.

134. (1) After the balance-sheet has been laid before the company at the general meeting, a copy thereof signed by the manager or secretary of the company shall be filed with the registrar at the same time as the copy of the annual

list of members and summary prepared in accordance with the requirements of section 32.

(2) If the general meeting before which a balance-sheet is laid does not adopt the balance sheet, a statement of that fact and of the reasons therefor shall be annexed to the balance-sheet and to the copy thereof required to be filed with the registrar.

(3) This section shall not apply to a private company.

(4) If a company makes default in complying with the requirements of this section, the company and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty as is provided by section 32 for a default in complying with the provisions of that section.

Right of member of company to copies of the balance-sheet and the auditor's report.

135. Save as otherwise provided in this Act, any member of a company shall be entitled to be furnished with copies of the balance-sheet and the auditor's report at a charge not exceeding six annas for every hundred words or fractional part thereof.

Statement to be published by Banking and certain other Companies.

Certain companies to publish statement in schedule.

136. (1) Every company being a limited banking company or an insurance company or a deposit, provident or benfit society shall, before it commences business, and also on the first Monday in Poh and the first Monday in Har in every year during which it carries on business, make a statement in the form marked G in the Third Schedule, or as near thereto as circumstances will admit.

(2) A copy of the statement shall be displayed and, until the display of the next following statement, kept displayed in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on.

(3) Every member and every creditor of the company shall be entitled to a copy of the statement on payment of a sum not exceeding eight annas

(4) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalt.

Investigation by the Registrar.

137. (1) Where the registrar, on perusal of any document which a company is required to submit to him under the provisions of this Act, is of opinion that any information or explanation is necessary in order that such document may afford full particulars of the matter to which it purports to relate, he may, by a written order, call on the company submitting the document to furnish in writing such information or explanation within such time as he may specify in his order

Power of registrar to call for information or explanation.

(2) On the receipt of an order under sub-section (1), it shall be the duty of all persons who are or have been officers of the company to furnish such information or explanation to the best of their power.

(3) If any such person refuses or neglects to furnish any such information or explanation, he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

(4) On receipt of such information or explanation the registrar may annex the same to the original document submitted to him; and any additional document so annexed by the registrar shall be subject to the like provisions as to inspection and the taking of copies as the original document is subject.

(5) If such information or explanation is not furnished within the specified time, or if after perusal of such information or explanation the registrar is of opinion that the document in question discloses an unsatisfactory state of affairs, or that it does not disclose a full and fair statement of the matters to which it purports to relate, the registrar shall report in writing the circumstances of the case to His Highness.

Inspection and Audit.

138. His Highness may appoint one or more competent inspectors to investigate the affairs of any company and to report thereon in such manner as His Highness may direct,—

Investigatin of affairs of company by inspectors.

(*i*) in the case of a banking company having a share capital, on the application of members holding not less than fifth of the shares issued;

(*ii*) in the case of any other company having a share capital, on the application of members holding not less than one-tenth of the shares issued;

(*iii*) in the case of a company not having a share capital on the application of not less than one-fifth in number of the persons on the company's register of members;

(*iv*) in the case of any company, on a report by the registrar under section 137, sub-section (*5*).

Application for inspection to be supported by evidence.

139. An application by members of a company under section 138 shall be supported by such evidence as His Highness may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in, requiring the investigation; and His Highness may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

Inspection of books and examination of officers.

140. (*1*) It shall be the duty of all persons who are or have been officers of the company to produce to the inspectors all books and documents in their custody or power relating to the company.

(*2*) An inspector may examine on oath any such person in relation to its business, and may administer an oath accordingly.

(*3*) If any person refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company he shall be liable to a fine not exceeding fifty rupees in respect of each offence.

Results of examination how dealt with.

141. (*1*) On the conclusion of the investigation, the inspectors shall report their opinion to His Highness, and a copy of the report shall be forwarded by His Highness to the registered office of the company, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(*2*) The report shall be written or printed, as His Highness directs.

(*3*) All expenses of, and incidental to, the investigation shall to defrayed by the applicants unless His Highness directs the same to be paid by the company, which His Highness is hereby authorised to do.

Power of company to appoint inspectors.

142. (*1*) A company may by special resolution appoint inspectors to investigate its affairs.

(*2*) inspectors so appointed shall have the same powers and duties as inspectors appointed by His Highness, except that, instead of reporting to His Highness, they shall report in such manner and to such persons as the company in general meeting may direct.

(*3*) All persons who are or have been officers of the com-

pany shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by His Highness.

Report of inspectors to be evidence.

143. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

Qualification and appointment of auditor.

144. (*1*) No person shall be appointed or act as an auditor of any company other than a private company unless he holds a certificate from His Highness entitling him to act as an auditor of companies.

[1][(*2*) His Highness the Maharaja Bahadur may by notification in the Jammu and Kashmir Government Gazette and after previous publication make rules providing for the grant, renewal or cancellation of such certificates and prescribing conditions and restrictions for such grant, renewal or cancellation :

Provided that nothing contained in such rules shall preclude any person from being granted a certificate merely by reason that he does not practise as a public accountant.

(*2-A*). In particular, and without prejudice to the generality of the foregoing power, such rules may

(*a*) provide for the maintenance of a registrar of accountants entitled to apply for such certificates;

(*b*) prescribe the qualifications for enrolment on the register and the fees therefor;

(*c*) provide for the examination of candidates for enrolment, and prescribe the fees to be paid by examinees;

(*d*) prescribe the circumstances in which the name of any person may be removed from or restored to the register;

(*e*) provide for the establishment, constitution and procedure of a State Accountancy Board, consisting of persons representing the interests principally affected or having special knowledge of accountancy to advise His Highness on all matters of administration elating to accountancy, and to assist him in maintaining the standards of qualification and conduct of persons enrolled on the register; and

(*f*) provide for the establishment, constitution and procedure of local accountancy boards at such centres as His

[1]Sub-section (2) of section 144 substituted *vide* Act V of 1988 published in Government Gazette dated 18th Mar 1988.

Highness may select, to advise him and the Accountancy Board on any matter that may be referred to them].

(3) Ever company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(4) If an appointment of an auditor is not made, at an annual general meeting, His Highness may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(5) The following persons; that is to say—

(i) a director or officer of the company; and

(ii) a partner of such director or officer; and

(iii) in the case of a company other than a private company, any person in the employment of such director or officer.

shall not be appointed auditors of the company.

(6) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a member of the company to the company not less than fourteen days before such annual general meeting, and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to its members either by advertisement or in any other mode allowed by the articles not less than seven days before the annual general meeting:

Provided that, if after notice of the intention to nominate an auditor has been given to the company, an annual general meeting is called for a date fourteen days or less after the notice has been given, the requirements of this section as to time in respect of such a notice shall be deemed to have been satisfied, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this section, be sent or given at the same time as the notice of the annual general meeting.

(7) The first auditors of the company may be appointed by the directors before the statutory meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the members of the company in general meeting, in which case such members at that meeting may appoint auditors.

(8) The directors may fill any casual vacancy in the office of the auditor, but while any such vacancy continues, the surviving or continuing auditor or auditors (if any) may act

(9) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors.

Powers and duties of auditors.

145. (1) Every auditor of a company shall have a right of access at all times, to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors

(2) The auditors shall make a report to the members of the company on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state—

(a) whether or not they have obtained all the information and explanations they have required; and

(b) whether, in their opinion, the balance sheet referred to in the report is drawn up in conformity with the law; and

(c) whether such balance sheet exhibits a true and correct view of the state of the company's affairs according to the best of their information and the explanations given to them and as shown by the books of the company.

(3) In the case of a banking company, if the company has branch banks beyond the limits of the state it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as have been transmitted to the head office of the company in the State.

Rights of preference shareholders etc., as to receipt and inspection of reports, etc.

146. (1) Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of the company and the reports of the auditors and other reports as is possessed by the holders of ordinary shares in the company.

(2) This section shall not apply to a private company, nor to a company registered before the commencement of this Act.

Carrying on business with less than the legal minimum of members.

Liability for carrying on business with fewer than seven or, in the case of a private company, two members.

147. If at any time the number or members of a company is reduced, in the case of a private company, below two, or in the case of any other company, below seven, and it carries on business for more than six months

while the number is so reduced every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with fewer than two members or seven members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be sued for the same without joinder in the suit of any other member.

Service and Authentication of Documents.

Service of document on company.

148. A document may be served on a company by leaving it at, or sending it by post to, the registered office of the company.

Service of documents on registrar.

149. A document may be served on the registrar by sending it to him by post or delivering it to him, or by leaving it for him at his office.

Authentication of documents.

150. A document or proceeding requiring authentication by a company may be signed by a director, secretary or other authorised officer of the company, and need not be under its common seal.

Application and alteration of tables, and forms, and power to make rules as to prescribed matters.

151. (*1*) The forms in the Third Schedule or forms as near thereto as circumstances admit shall be used in all matters to which those forms refer.

(*2*) His Highness may alter any of the tables and forms in the First Schedule ; so that he does not increase the amount of fees payable to the registrar in the said Schedule mentioned, and may alter or add to the forms in the Third Schedule.

(*3*) Any such table or form, when altered, shall be published in the Government Gazette and on such publication shall have effect as if enacted in this Act but no alteration made by His Highness in Table A in the First schedule shall affect any company registered before the alteration; or repeal, as respects that company, any portion of that table.

(*4*) In andi ion to the powers herein before conferred by this section, His Highness may make rules providing for all or any mat ers which by this Act are to be prescribed by his autho ity.

(*5*) Every such rule shall be published in the Government Gazette, and on such publication shall have effect as if enacted in this Act.

Arbitration and Compromise.

Power for companies to refer matters to arbitration.

152. (*1*) A company may by written agreement refer to arbitration, in accordance with the law of Arbitration for the time being in force, an existing or future difference between itself and any other company or person.

(*2*) Companies, parties to the arbitration, may delegate to the arbitrator power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by their directors or other managing body.

(*3*) The provisions of the law of Arbitration for the time being in force other than those restricting the application of the Act in respect of the subject matter of the arbitration, shall apply to all the arbitrations between companies and persons in pursuance of this Act.

Power to compromise with creditors and members.

153. (*1*) Where a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application in a summary way of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liqu dator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Court directs.

(*2*) If a majority in number representing three-fourths in value of the creditors or class of creditors, or members or class of members, as the case may be, present either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors or on all members, or class of members as the case may be, and also on the company, or, in the case of a company in the course of being wound up, on the liquidator and contributories of the company,

(*3*) In this section the experession "company" means any company liable to be wound up under this Act.

Conversion of private company into public company.

Conversion of private into public company.

154. (*1*) A private company may, subject to any thing contained in its memorandum or articles by a special resolution and by filing with

satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Meaning of "contributory".

158. The term "contributory" means every person liable to contribute to the assest of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes any person alleged to be a contributory.

Nature of liability of contributory.

159. The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times when calls are made for enforcing the iability.

Contributories in case of death of member.

160. (*1*) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives and his heirs shall be liable in a due course of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(*2*) If the legal representat ves or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether moveable or immoveable, or both and of compelling payment thereout of the money due.

Contributories in case of insolvency of member.

161. If a contributory is adjudged insolvent either before or after he has been placed on the list of contributories, then—

(*1*) his assignees shall represent him for a l the purposes of the winding up. and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(*2*) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

Winding up by Court.

Circumstances in which company may be wound up by Court.

162. A company may he wound up by the Court—

(*i*) if the company has by special resolution resolved that the company be wound up by the Court :

(*ii*) if default is made in filing the statutory report or in holding the statutory meeting

(*iii*) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year :

(*iv*) if number of members is reduced, in the case of a private company, below two or, in the case of any other company, below seven :

(*v*) if the company is unable to pay its debts :

(*vi*) if the Court is of opinion that it is just and equitable that the company should be wound up :

Company when deemed unable to pay its debts.

163. A company shall be deemed to be unable to pay its debts—

(*i*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundered rupees then due, has served on the company, by leaving the same at its registered office, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ; or

(*ii*) if execution or other process issued on a decree or order of any Court in favour of a creditor of the company is returned unsatified in whole or in part ; or

(*iii*) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

Winding up may be referred to District Court.

164. Where the High Court makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court ; and thereupon such District Court shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.

Transfer of winding up from one District Court to another.

165. If during the progress of a winding up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court having jurisdiction to wind up companies, the High Court may transfer the same to such other Court, and thereupon the winding up shall proceed in such other District Court.

166. An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section, either by the company or by any creditor or creditors (including any contingent or prospective creditor or creditors), contributory or contributories, or by all or any of those parties, together or separately :

Provisions as to application for windig up.

Provided that

(*a*) a contributory shall not be entitled to present a petition for winding up a company unless—

(*i*) either the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven ; or

(*ii*) the shares in respect of which he is a contributory or some of them either were originaly allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder ;

(*b*) a petition for winding up a company on the ground of default on filing the statutory report or in holding the statutory meeting shall not be presented by any person except a shareholder, nor before the expiration of fourteen days after the last days on which the meeting ought to have been held ;

(*c*) the Court shall not give a hearing to a petition for winding up a company by a contingent or prospective creditor until such security for costs has been given as the Court thinks reasonable and until a *prima facie* case for winding up has been established to the satifaction of the Court.

167. An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if made on the joint petition of a creditor and of a contributory.

Effect of winding up order.

168. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

Commencement of winding up by Court.

169. The Court may, at any time after the presentation of the petition for winding up a company under this Act, and before making an order for winding up the company upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceeding against the company, upon such terms as the Court thinks fit.

Court may grant injunction.

Powers of Court on hearing petition.

170. (*1*) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order that it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(*2*) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Suits stayed on winding up order.

171. When a winding up order has been made, no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

Copy of winding up order to be filed with Registrar.

172. (*1*) On the making of winding up order, it shall be the duty of the company forthwith to file with the registrar a copy of the order, and the petitioner in winding up proceedings may so file a copy.

(*2*) On the filing of the copy of a windiug up order, the registrar shall make a minute thereof in his books relating to the company, and shall notify in the Government Gazette that such an order has been made.

(*3*) Such order shall be deemed to be notice of discharge to the servants of the company, except when the business of the company is continued.

Power of Court to stay winding up.

173. The Court may at any time after an order for winding up, on the application of any creditor or contributory. and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit,

Court may have regard to wishes of creditors or contributories.

174. The Court may, as to al matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Official Liquidators.

Appointment of official liquidators.

175. (*1*) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as

Court may impose, the Court may appoint a person or persons to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up.

(3) If more persons than one are appointed to the office of official liquidator the Court shall declare whether any act by this Act required or authorised to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any, and what, security is to be given by any official liquidator on his appointment,

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards be discovered in his appointment: Provided that nothing in this sub-section shall be deemed to give validity to acts done by any official liquidator after his appointment has been shown to be invalid.

(6) A receiver shall not be appointed of assets in the hands of an official liquidator.

Resignations, removals filling up vacancies and compensation.

176. (1) Any official liquidator may resign or be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court

(3) There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Official liquidator.

177. The official liquidator shall be described by the style of the official liquidator of the particular company in respect o which he is appointed, and not by his individual name.

Custody of company's property.

178. (1) The official liquidator shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(2) If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

Powers of official liquidator.

179. The official liquidator shall have power, with the sanction of the Court, to do the following things:—

(a) to institute or defend any suit or prosecution, or other

legal proceeding, civil or criminal, in the name and on behalf of the company;

(*b*) to carry on the businses of the company so far as be necessary for the beneficial winding up of the same;

(*c*) to sell the immoveable and moveable property of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(*d*) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seals;

(*e*) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(*f*) to draw, accept, make and indorse any bill of exchange, hundi or promissory note in the name and on behalf of the company with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(*g*) to raise on the security of the assets of the company any money requisite;

(*h*) to take out, in his official name letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company; and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself;

(*i*) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Discretion of Official Liquidator.

180. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Provision for legal assistance to official liquidator.

181. The official liquidator may, with the sanction of the Court, appoint an advocate, attorney or pleader entitled to appear before the Court to assist him in the performance of his

duties: Provided that, where the official liquidator is an atorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Official books to be kept by Liquidator in winding up.

182. The official liquidator of a company which is being wound up by the Court shall keep, in manner prescribed, proper books in which he shall cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent inspect any such books.

Exercise and control of liquidator's powers.

183. (*1*) Subject to the provisions of this Act the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting.

(*2*) The official liquidator may summon general meetings of the creditors or codtributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolutions, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories, as the case may be.

(*3*) The official liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising in the winding up.

(*4*) Subject to the provisions of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(*5*) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court and the Court may confirm, reverse or modify the act or decision complained of, and make such order as it thinks just in the circumstances.

Ordinary Powers of Court.

Settlement of list of contributories and application of assets.

184. (1) As soon as may be after making a winding up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be collected and applied

in discharge of its liabilities.

(2) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

Power to require delivery of property.

185. The court may, at any time after making winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver, surrender or transfer forthwith or within such time as the Court directs, to the official liquidator any money, property or documents in his hands to which the company is *prima facie* entitled.

Power of Court to make calls.

186. (*1*) The Court may, at any time after making a winding up order, make an order on any contributory for the time being settled on the list of contributories to pay, in manner directed by the order, any money due from him or from the estate of the person whom he represents to the company exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set-off any money due to him or to the estate which he represents from the company on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and may, in the case of a limited company, make to any director whose liability is unlimited or to his estate the like allowance:

Provided that, in the case of any company, whether limited or unlimited, when all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Power of Court to make calls.

187. (*1*) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.

(*2*) In mak ng the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

Power to order payment into bank.

188. The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into a bank named by it, as the case may be, or any branch thereof, respectively, to the account of the official liquidadator, instead of to the official liquidator, and any such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

189. All moneys, bills, hundis, notes and other securities paid and delivered into the bank named under section 188 or any branch thereof respectively, in the event of a company being wound up by the Court, shall be subject in all respects to the orders of the Court.

Order on contributory conclusive evidence.

190. (*1*) An order made by the Court on a contributory shall (subject to any right of appeal) be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.

(*2*) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

Power to exclude creditors not proving in time.

191. The court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made befo e those debts are proved.

Adjustment of rights of contributories.

192. The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

Power to order costs.

193. The Court may, in the event of the assets being insufficient to satisfy the liabil ties, make on order as to the payment out of the assets of the costs, charges and expenses incurred in the winding up in such order of priority as the Court thinks just.

Dissolution of company.

194. (*1*) When the affairs of a company have been completely wound up, the Court shall make an o der that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(*2*) The o der shall be reported within fifteen days of the mak ng thereof by the official liquidator o the registrar, who shall make n his books a minute of the dissolution of the company.

(*3*) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which he is in default.

Extraordinary Powers of Court.

Power to summon persons suspected of having property of company.

195. (*1*) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealings, affairs or property of the company.

(*2*) The Court may examine him on oath concerning the same, either by word of mouth or on written interrogatories, and may reduce his answers to writing and require him to sign them.

(*3*) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(*4*) If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

Power to order public examination of promoters, directors, etc.

196. (*1*) When an order has been made for winding up a company by the Court, and the official liquidator has applied to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since its formation the Court, may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company, or has been a director, manager or other officer of the company shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sacntioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court,

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) Tbe person examined shall be examined on oath, and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any perso entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him : Provided that if he is in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs as in its discretion it may think fit

(7) Notes of the examination shall be taken down in writing and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs, and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court, being a Registrar, or Deputy Registrar, and the powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the person before whom the exmination is held.

197. The Court, at any time either before or after making winding up order on proof of probable cause for believing that a contributory is about to quit the State or otherwise to abscond or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and moveable property to be seized, and him and them to be safely kept until such time as the Court may order.

Power to arrest absconding contributory.

198. Any powers by this Act conferred on the Court shall be in addition to, and not in restriction of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

Saving of other proceedings.

Enforcement of and Appeal from orders.

199. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced

Power to enforce order.

200. Any order made by a Court for or in the course of the winding up of a company shall be enforced in any place in the State other than that in which such Court is situate, by the Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such other place, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Order made in any Court to be enforced by other Courts.

201. Where any order made by one Court is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made, and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

Mode of dealing with orders to be enforced by other Courts.

202. Re-hearings of and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

Appeals from orders.

Voluntary winding up.

203. A company may be wound up voluntarily :—

Circumstances in which company may be wound up voluntarily.

(*1*) when the period (if any) fixed for the duration of the

company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily.

(2) if the company resolves by special resolution that the company be wound up voluntarily;

(3) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

Commencement of voluntary winding up.

204. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising the winding up.

Effect of voluntary winding up on status of company.

205. When a company is wound up voluntarily, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof :

Provided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

Notice of resolution to wind up voluntary.

206. (*1*) Notice of any special resolution or extraordinary resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the Government Gazette, and also in some newspapers (if any) circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding fifty rupees for every day during which the default continues; and every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty,

Consequences of voluntarily winding up.

207. The following consequences shall ensue on the voluntary winding up of company :—

(*i*) the assests of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto, shall unless the article otherwise provide, be distributed among the members according to their rights and interests in the company ;

(*ii*) the company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company and may fix the remuneration to be paid to him or them ;

(*iii*) on the appointment of a liquidator, all the powers of the directors shall cease, except so far as the company in general meeting, or the liquidator, sanctions the continuance thereof;

(*iv*) the liquidator may, without the sanction of the company, exercise all powers by this Act given to the official liquidator in a winding up by the Court;

(*v*) the liquidator may exercise the powers of the Court under this Act of settling a list of contributories and of making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves;

(*vi*) the list of contributories shall be *prima facie* evidence of the liability of the persons named therein to contributories;

(*vii*) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined by the company at the time of their appointment, or in default of such determination by any number not less than two:

(*viii*) if from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator; and

(*ix*) the Court may, on cause shown, remove a liquidator and appoint another liquidator.

Notice by liquidator of his appointment.

208. (*1*) The liquidator in a voluntary winding up shall, within twenty-one days after his appointment, file with the registrar a notice of his appointment in the form prescribed.

(*2*) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Rights of creditors in a voluntary winding up.

209. (*1*) Every liquidator appointed by a company in a voluntary winding up shall, within seven days from his appointment, send notice by post to all persons who appear to him to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than twenty-one days nor more than one month after his appointment, and at a place and hour, to be specified in the notice, and shall also advertise notice of the meeting once in the Government Gazette and once at least in some newspaper (if any) circulating in the district where the registered office, or principal place of business of the company was situate.

(*2*) At the meeting to be held in pursuance of the foregoing provisions of this section the creditors shall determine whether

an application shall be made to the Court for the appointment of any person as liquidtor in the place of, or jointly with, the liquidator appointed by the company, and, if the creditors so resolve, and application may be made accordingly to the Court at any time not later than fourteen days after the date of the meeting, by any creditor appointed for the purpose at the meeting:

Provided that the Court may, by order at any time, extend the time for making an application under this sub-section for such period as the Court thinks proper.

(3) On any such application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator or jointly with the liquidator appointed by the company, or such other order as, having regard to the interest of the creditor and contributories of the company, may seem just.

(4) The Court shall make such order as to the costs of the application as it may think fit, and, if it is of opinion that, having regard to the interests of the creditors in the liquidation there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company, notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

Power to fill vacancy in office of liquidator.

210. (*1*) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be called by any contributory or, if there were more liquidators than one, by the continuing liquidators.

(3) The meeting shall be held in manner prescribed by the articles, or in such manner as may, on application by any contributory or by the continuing liquidators, be determined by the Court.

Delegation of authority to appoint liquidators.

211. (*1*) A company about to be, or in course of being, wound up voluntarily may, by exraordinary resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

(*2*) Any act done by creditors in persuance of any such delegated power shall have the same effect as if it had been done by the company.

Arrangement when binding on creditors.

212. (*1*) Any arrangement entered into between a company about to be, or in the course of being, wound up voluntarily and its creditors shall, subject to any right of appeal under this section, be binding on the company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the Court against it. and the Court may thereupon, as it thinks just, amend, vary or confirm the arrangement.

Power for liquidators to accept shares etc., as a consideration for sale of property of company.

213. (*1*) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company (in this section called the transferee company) the liquidator of the first-mentioned company (in this section called the transferor company) may, with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interest in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company, may, in lieu of receiving cash, shares, policies or other like interest, or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company

(*2*) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(*3*) If any member of the transferor company who did not vote in favour of the special resolution at either of the meetings held for passing and confirming the same expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the confirmation of special resolution, he may require the liquidator either to abstain from carrying the resolution into effect, or to purchase his interest at a price to be determined by agreement or by arbitration in manner hereinafter provided.

(*4*) If the liquidator elects to purchase the member's interest, the purchase-money must be paid before the company is dissolvod, and be raised by the liquidator in such manner

as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purpose of this section by rea on that it is pas·ed before or concurrently with a resolution for winding up the company, or for appointing liquidators; but if an order is made within a year for winding up the company by or subject to the sup·rvision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

Mode of determining price.

214. (*1*) The price to be paid for lthe purchase of the interest of any dissentient member mav be determined by agreement. If the parties dispute about the same, such dispute shall be settled by arbitration.

(2) The provisions of the law of arbitration for the t me being in force, other than those restricting the application of the Act in respect of the subject-matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

Power to apply to Court.

215. (*1*) Where a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up, or to exercise as respects the enforcing of calls, or any other matters, al or any of the powers which the Court might exercise if the company were being wound up by the Court.

(2 The Court, if satisfied that the determination of the question or the requi.ed exercise of power will be just and beneficial, mav accede wholly or partially to the application on such terms and conditions as the Court thinks fit. or may make such other order on the application as the Court thinks just.

Power of liquidator to call general meeting.

216. (*1* Where a company is being wound up voluntarily, the liquidator may, form time to time, summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purposes he may think fit.

(2) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up, and of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting a statement in the prescribed form containing the prescribed particulars with respect to the proceedings in and the position of the liquidation.

Final meeting and dissolution.

217. (*1*) In the case of every voluntary winding up as soon as the affairs of the company are fully wound up, the liquidator shall make up an

account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of; and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof.

(2) The meeting shall be called by advertisement, specifying the time, place and object thereof and published one month at least before the meeting in the manner specified in section 206.

(3) Within one week after the meeting, the liquidator shall file with the registrar a return of the holding of the meeting, and of its date, and in default of so doing, shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

(4) The registrar on the filing of the return shall forthwith register it, and, on the expiration of three months from the registration of the return, the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding fifty rupees for every day during which the default continues.

Cost of voluntary liquidation.

218. All costs, charges and expenses properly incurred in the voluntary winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims at the date of the winding up.

Saving for rights of creditors and contributories.

219 The voluntary winding up of a company shall not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of opinion, in the case of an application by a creditor, that the rights of the creditor or, in the case of an application by a contributory, that the rights of the contributories will be prejudiced by a voluntary winding up.

Power to Court to adopt proceedings of voluntary winding up.

220. Where a company is being wound up voluntarily, and an order is made for winding up by the Court, the Court, may, if it thinks fit by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up.

Winding up subject to supervision of Court.

Power to order winding up subject to supervision.

221. When a company has by special or extraordinary resolution resolved to wind up voluntarily the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

Effect of petition for winding up subject to supervision.

222. A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding up by the Court.

Court may have regard to wishes of creditors and contributories.

223. The Court may, in deciding between a winding up by the Court and a winding up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

Power for Court to appoint or remove liquidator.

224. (*1*) Where an order is made for a winding up subject to supervision the Court may by the same or any subsequent order appoint any additional liquidator.

(*2*) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if he had been appointed by the company.

(*3*) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

Effect of supervision order.

225. (*1*) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(*2*) Except as provided in sub-section (1), and save for the purposes of section 196, any order mad by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for wind ng up the company by the Court, and shall confer full authority on the Court to make calls, or to enforce calls made by the

liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidator to office of official liquidators.

226. Where an order has been made for the winding up of a company subject to supervision, and an order is afterwards made for winding up by the Court, the Court may, by the last mentioned order or by any subsequent order appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

Supplemental Provisions.

Avoidance of transfers, etc., after commencement of winding up.

227. (1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, every disposition of the property (including actionable claims) of the company, and every transfer of shares, or alteration in the status of its members, made after the commencement of the winding up shall, unless the Court otherwise orders, be void.

Debts of all description to be proved.

228. In every winding up (subject in the case of insolvent companies to the application in accordance with the provisions of this Act of the law of insolvency) all debts payable on a contigency, and all claims against the company, present or future, certain or contigent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contigency or for some other reason do not bear a certain value.

Application of insolvency rules in winding up of insolvent companies.

229. In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and to the valuation of annuities

and future and contigent liabilities as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent; and all persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

230. (*1*) In a winding up there shall be paid in priority to all other debts— **Preferential payments.**

(*a*) all revenue, taxes, cesses and rates, whether payable to the state or to a local authority, due from the company at the date hereinafter mentioned and having become due and payable within the twelve months next before that date;

(*b*) all wages or salary of any clerk or servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand rupees for each clerk or servant; and

(*c*) all wages of any labourer or workman, not exceeding five hundered rupees for each whether payable for time or piecework, in respect of services rendered to the company within the two months next before the said date.

(*2*) The foregoing debts shall

(*a*) rank equally among themselves and be paid in full unless the assets are insufficient to meet them; in which case they shall abate in equal proportion; and

(*b*) so far as the assets of the company availale for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(*3*) Subject to the retention of such sums as may be necessary for the cost and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the as ets are sufficient to meet them.

(*4*) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof;

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(*5*) The date hereinbefore in this section referred to is—

(*a*) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily, the date of the winding up order; and

(*b*) in any other case, the date of the commencement of the winding up.

Fraudulent preference

231. (*1*) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall, if made or done by or against a company be deemed, in the event of its being wound up, fraudulent preference of its creditors, and be invalid accordingly.

(*2*) For the purposes of this section the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and a resolution for winding up, in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(*3*) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Avoidance of certain attachments, executions, etc.

232. (*1*) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects of the company after the commencement of the winding up shall be void.

(*2*) Nothing in this section applies to proceedings by the Government.

Effect of floating charge.

233. Where a company is being wound up a floating charge on the undertaking or property of the company created within three months of the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in codsideration for, the charge, together with interest on that amount at the rate of five per cent. per annum.

General scheme of liquidation may be sanctioned.

234. (*1*) The liquidator may, with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case

of a voluntary winding up, do the following things or any of them:—

(*i*) pay any classes of creditors in full ;

(*ii*) make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim, present or future, whereby the company may be rendered liable ;

(*iii*) compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(*2*) The exercise by the liquidator of the powers of this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers.

235. (*1*) Where, in the course of winding up a company, it appears that any person who has taken part in the formation or promotion of company, or any past or present director, manager or liquidator, or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

Power of Court to assess damages against delinquent directors, etc.

(*2*) This section shall apply notwithstand ng that the offence is one for which the offender may be criminally responsible.

(*3*) The Limitation Act shall apply to an application under this section as if such application were a suit.

236. If any director, manager, officer or contributory of any company being wound up destroys, mutilates, alters or falsifies or fraudulently secretes any books, papers or securities, or makes, or is privy to the making of, any false or fraudulent entry in any regis er book

Penalty for falsification of books.

of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Prosecution of delinquent directors, etc.

237. (*1*) If it appears to the Court, in the course of a winding up by or subject to the supervision of the Court, that any past or present director, manager officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the Court may, on the application of any person interested in the winding up, or of its own motion, direct the official liquidator or the liquidator (as the case may be) to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

(*2*) If it appears to the liquidator, in the course of a voluntary winding up, that any past or present director, manager, officer or member of the company has been guilty of any offence in relation to the company for which he is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company in priority to all other liabilities.

Penalty for false evidnce.

238. If any person, upon any examination upon oath authorised under this Act or in any affidavit, deposition or solemn affirmation in or about the winding up of any company under this Act or otherwise in or about any matter arising under this Act intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Meetings to ascertain wishes of creditors or contributories.

239. (*1*) Where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories, as proved to it by any sufficient evidence, the Court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as chairman of any such meeting and to report the result thereof to the Court.

(*2*) In the case of creditors, regard shall be had to the value of each creditor's debt.

(*3*) In the case of contributories, regard shal be had to the number of votes conferred on each contributory by the articles.

Documents of company to be evidence.

240. Where any company is being wound up all documents of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of

truth of all matters purporting to be therein recorded.

Inspection of documents.

241. After an order for a winding up by or subject to the supervion of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be inspected by creditors or contributories accordingly; but not further or otherwise.

Disposal of documents of company.

242. (*1*) When a company has been wound up and is about to be dissolved, the documents of the company and of the liquidators may be disposed of as follows (that is to say) :—

(*a*) in the case of a winding up, by or subject to the supervision of the Court, in such way as the Court directs ;

(*b*) in the case of a voluntary winding up, in such way as the company by extraordinary resolution directs.

(*2*) After three years from the dissolution of the company, no responsibility shall rest on the company, or the liquidators or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

Power of Court to declare dissolution of company void.

243. (*1*) Where a company has been dissolved, the Court may, at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the campany or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(*2*) It shall be the duty of the person on whose application the order was made, within twenty-one days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do, he shall he liable to a fine not exceeding fifty rupees for every day during which the default continues.

Information as to pending liquidations.

244. (*1*) Where a company is being wound up, if the winding up is not concluded within one year after its commencement, the liquidators shall, at such intervals as may be prescribed, until the winding up is concluded, file with the registrar a statment in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under [1]section 140 of the Ranbir Dand Bidhi, and shall be punishable accordingly on the application of the liquidator.

(3) If a liquidater fails to comply with the requirements of this section, he shall be liable to a fine not exceeding five hundred rupees for each day during which the default continues.

Court or person before whom affidavit may be sworn.

245. (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in the State, or elsewhere within the dominions of His Majesty, before any Court, Judge or person lawfully authorised to take and receive affidavits, or in any part of India other than British India before any Court authorised or continued by the Governor General in Council, or in any place outside His Majesty's dominions before any of His Majesty's Consuls or Vice-Consuls.

(2) All Courts, Judges, Justices, Commissioners and persons acting judicially in the State shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit, or to any other document to be used for the purposes of this Part.

Rules.

Power of High Court to make rules.

246. (1) The High Court may, from time to time, make rules consistent with this Act and with the Code of Civil Procedure, concerning the mode of proceedings to be had for winding up a company in such Court and in the Courts subordinate thereto and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a company, and shall make rules providing for all matters relating to the winding up of companies which, by this Act are to be prescribed.

(2) Without prejudice to the generality of the foregoing power, the High Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the matters following, to

[1]Section 182 of the Ranbir Penal Code.

be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of—

(*a*) holding and conducting meetings to ascertain the wishes of creditors and contributories;

(*b*) settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets;

(*c*) requiring delivery of property or documents to the liquidator;

(*d*) making calls;

(*e*) fixing a time within which debts and claims must be proved:

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

Removal of defunct Companies from Register.

Registrar may strike defunct company off register.

247. (*1*) Where the registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(*2*) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Government Gazette with a view to striking the name of the company off the register.

(*3*) If the registrar either receives an answer from the company to the effect that it is not carryiug on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Government Gazette, and send to the company by post a notice that, a the expiration of the three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(*4*) If, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully

wound up, and the returns required to be made by liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the Government Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Government Gazette, and, on the publication in the Government Gazette of this notice, the company shall be dissolved: Provided that the liability (if any) of every director and member of the company shall continue and may be enforced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherewise that it is just that the company be restored to the register, order the name of the company to be restored to the register, and thereupon the company shall be deemed to have cotinued in existance as if its name had not been struck off and the Court may by the order give such directions and make provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company, or, if there is no director, manager or other officer of company whose name and address are known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

PART VI.

REGITRATION OFFICE AND FEES.

Registration offices.

248. (*1*) For the purposes of the registratisn of companies under this Act, there shall be offices at such places as His Highness

thinks fit, and no company shall be registered except at an office within the province in which, by the memorandum, the registered office of the company is declared to be established.

(2) His Highness may appoint such registrars and assistant registrars as he thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by His Highness.

(4) His Highness may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(5) Any person may inspect the documents kept by the registrar on payment of such fees as may be appointed by His Highness, not exceeding one rupee for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar on payment for the certificate, certified copy or extract, of such fees as His Highness may appoint, not exceeding three rupees for a certificate of incorporation, and not exceeding six annas for every hundred words or fractional part thereof required to be copied.

(6) Whenever any act is by this Act directed to be done to or by the registrar, it shall, until His Highness otherwise directs, be done to or by the existing registrar of joint-stock companies or in his absence to or by such person as His Highness may for the time being authorise ; but, in the event of His Highness' altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place with reference to the local situation of the registered offices of the companies to be registered as His Highness may appoint.

249. (1) There shall be paid to the registrar in respect of the several matters mentioned in table B in the First Schedule the several fees therein specified, or such smaller fees as His Highness may direct.

Fees.

(2) All fees paid to the registrar in pursuance of this Act shall be accounted for to the State.

PART VII.

250 to 252. Omitted.

PART VIII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

253. (*1*) With the exceptions and subject to the provisions mentioned and contained in this section,—

(*1*) any company consisting of seven or more members, whether registered already or not, and being otherwise duly constituted accordidg to law ;

may at any time register under this Act as an unlimited company or as a company limited by shares, or as a company limited by gaurantee ; and the registration shall not be invalid by reason that it has taken place with a view to the company being wound up :

(*2*) Provided as follows :

(*a*) a company having the liability of its members limited by Act of the State and not being a joint-stock company as hereinafter defined, shall not register in pursuance of this section :

(*b*) a company having the liability of it members limited by Act of Parliament, Act of the Governor General in Council or Act of the State or by Letters Patent shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(*c*) a company that is not a joint-stock company as hereinafter defind shall not register in pursuance of this section as a company limited by shares ;

(*d*) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy (in cases where proxies are allowed by the articles) at a general meeting summoned for the purpose ;

(*e*) where a company not having the liability of its members limited by Act of Parliament, Act of the Governor General in Council or Act of the State or by Letters Patent is about to register as limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person or by proxy at the meeting ;

(*f*) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be acompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a

member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member and of the costs and expenses of winding up, and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(*3*) In computing any majority under this section when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the articles

Definition of "joint-stock company".

254. For the purposes of this Part as for as relates to registration of companies as companies limited by shares a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock or divided and held partly in one way and partly in other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons; and such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Requirement for registration by joint-stock companies.

255. Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the registrar the following documents (that is to say):—

(*1*) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(*2*) a copy of any Act of Parliament, Act of the Governor General in Council, Act of the State, Royal Charter, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(*3*) if the company is intended to be registered as a limited company, a statement specifying the following particulars (that is to say):—

(*a*) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(*b*) the number of shares taken and the amount paid on each share;

(*c*) the name of the company, with the addition of

the word "Limited" as the last word thereof; and

(*d*) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

Requirements for registration by other than joint-stock companies.

256. Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the registrar—

(*1*) a list showing the names, addresses and occupations of the directors of the company; and

(*2*) a copy of any Act of Parliament, Act of the Governor General in Council, Act of the State, Letters Patent, deed of settlement, contract of co-partnery or other instrument constituting or regulating the company; and

(3) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Authentication of statement of existing companies.

257. The lists of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by a declaration of any two or more directors or other principal officers of the company.

Registrar may require evidence as to nature of company.

258. The registrar may require such evidence as he thinks necessary for the purpose of satisfiying himself whether any company proposing to be registered is or is not a joint-stock company as hereinbefore defined.

On registration of banking company with limited liability, notice to be given to customers.

259. (*1*) Where a banking company, which was in existence on the date of coming into force of this Act, proposes to register as a limited company, it shall, at least thirty days before so registering, give notice of its intention so to register to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(*2*) If the company omits to give the notice required by this section, then as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which the notice is given, but not further or otherwise, the certificate of registration with limited

liability shall have no operation.

Exemption of certain companies from payment of fees.

260. No fees shall be charged in respect of the registration in pursuance of this Part of a company, if it is not registered as a limited company, or if before its registration as a limited company, the liability of the shareholders was limited by some Act of the State.

Addition of "Limited" to name.

261. When a company registers in pursuance of this Part with limited liability, the word "Limited" shall form and be registered as part of its name.

Certificate of registration of existing companies.

262. On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Table B in the First Schedule, the registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

Vesting of property on registration.

263. All property, moveable and immovable, including all interests and rights in, to and out of property, moveable, and immoveable including obligations and actionable claims as may belong to or be vested in a company at the date of its registration in pursuance of this Part, shall, on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Saving of existing liabilities.

264. The registration of a company in pursuance of this Part shall not affect the rights or liabilities of the company in respect of any debt or obligation incurred or any contract entered into, by, to, with, or on behalf of, the company before registration.

Continuation of existing suits.

265. All suits and other legal proceedings which at the time of the registration of a company in pursuance of this Part are pending by or against the company, or the public officer or any member thereof, may be continued in the same manner as if the registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property and effects of the company being insufficient to satisfiy the decree or order, an order may be obtained for winding up the company.

Effect of registration under Act.

266. When a company is registered in pursuance of this Part,—

(*i*) all provisions contained in any Act of Parliment, Act of the Governor General in Council, Act of the State, deed of settlement, contract of co-partnery, Letters Patent, or other instruments constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contain in registered articles ;

(*ii*) all the povisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act subject as follows (that is to say) :—

(*a*) the regulations in Table A in the First Schedule shall not apply unless adopted by special resolution ;

(*b*) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;

(*c*) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or Act of the Governor General in Council or Act of the State relating to the company ;

(*d*) subject to the provisions of this section, the company shall not have power, without the sanction of His Highness to alter any provision contained in any Letters Patent relating to the company ;

(*e*) the company shall not have power to alter any provisions contained in a Royal Charter or Letters Patent with respect to the objects of the company ;

(*f*) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among

themselves in respect of any such debt or liability ; or to pay or contribute to the payment of the costs and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death or insolvency af any contributory, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply ;

(*iii*) the provisions of this Act with respect to—

(*a*) the registration of an unlimited company as limited ;

(*b*) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

(*c*) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;

shall apply notwithstanding any provisions contained in any Act of Parliament, Act of the Governor General in Council, Act of State, Royal Charter, deed of settlement, contract of co-partnery, Letters Patent or other instrument, constituting or regulating the company ;

(*iv*) nothing in this section shall authorise the company to alter any such provisions contained in any deed of settlement, contract of co-partnery, Letters Patent, or other instument constituting or regulating the company, as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act;

(*v*) nothing in this Act shall derogate from any lawful power of altering its constitution or regulations which may, by virtue of any Act of Parliament, Act of the Governor General in Council, Act of the State, deed of settlement, contract of co-partnery, Letters Patent or other instrument constituting or regulating the company, be vested in the company.

Power to substitute memorandum and articles or deed of settlement.

267. (*1*) Subject to the provisions of this section, a company registered in pursuance of this Part may by special resolution alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(*2*) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications :—

(*a*) there shall be substituted for the printed copy of the altered memorandum required to be filed with the registrar a printed copy of the substituted memorandum and articles ; and,

(*b*) on the registration of the alteration being certified by the registrar, the substituted memorandnm and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(*3*) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(*4*) In this section the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company, not being an Act of Parliament, an Act of the Governor General in Council, Act of the State, a Royal Charter or Letters Patent.

Power of Court to stay or restrain proceedings.

268. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

269. Where an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

PART IX.

WINDING UP OF UNREGISTERED COMPANIES.

Meaning of "unregistered company"

270. For the purposes of this Part, the expression "unregistered company" shall not include a company registered under this Act, but save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

Winding up of unregistered companies.

271. (*1*) Subject to the provisions of this Part, any unregistered company may be wound up under this Act and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions:—

(*i*) an unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of winding up, be deemed to be registered in the province where its principal place of bus.ness is situate or, if it has a principal place of business situate in more than one province, then in each province where it has a principal place of business; and the principal place of business situate in that province in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company;

(*ii*) no unregistered company shall be wound up under this Act voluntarily or subject to supervision;

(*iii*) the circumstances in which an unregistered company may be wounded up are as follows (that is to say):—

(*a*) if the company is dissolved, or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs;

(*b*) if the company is unable to pay its debts;

(*c*) if the Court is of opinion that it is ju.t and equitable that the company should be wound up;

(*iv*) an unregistered company shall for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, have served on the company by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks after the service

of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor ;

(*b*) if any suit or other legal proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, or procured the suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;

(*c*) if execution or other process issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied ; and

(*d*) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under any enactment repealed by this Act except that references in any such first-mentioned enactment to any such repealed enactment shall be read as reference to the corresponding provision (if any) of this Act.

Contributories in winding up of unregistered companies.

272. (*1*) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the

assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent, the provisions of this Act with respect to the legal representatives and heirs of deceased contributories and to the assignees of insolvent contributories shall apply.

Power to stay or restrain proceedings.

273. The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of an unregistered company where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

Suits stayed on winding up order.

274. Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

Directions as to property in certain cases.

275. If an unergistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order, or by any subsequent order, direct that all or any part of the property, moveable or immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims as may belong to the company or to trustees on its behalf, is to vest in the official liquidator by his official name, and thereupon the property or the part thereof, specified in the order shall vest accordingly; and the official liquidator may, after giving such indemnity (if any) as the Court may direct, bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for the purposes of effectually winding up the company and recovering its property.

Provisions of this Part cumulative.

276. The provisions of this Part with respect to unreigstered companies shall be in addition to, and not in restriction of, any provisions hereinbefore in this Act contained with respect to winding up companies by the Court and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed and registered under this Act but an unregistered company shall not, except in the event of

its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X.

COMPANIES ESTABLISHED OUTSIDE THE STATE.

Requirements as to companies established outside State.

277. (*1*) Every company incorporated outside the State, which at the commencement of this Act has a place of business in the State, and every such company which after the commencement of this Act establishes such a place of business within the State shall, within six months from the commencement of this Act or within one month from the establishment of such place of business, as the case may be, file with the registrar in the province in which such place of business is situated,—

(*a*) a certified copy of the charter, statues or memorandum and articles of the company, or other instrument constituting or defining the constitution of the company, and, if the instrument is not written in the English language, a certified translation thereof ;

(*b*) the full address of the registered or principal office of the company ;

(*c*) a list of the directors and managers (if any) of the company ;

(*d*) the names and addresses of some one or more persons resident in the State authorised to accept on behalf of the company service of process and any notices required to be served on the company ;

and, in the event of any alteration being made in any such instrument or in such address or in the directors or managers or in the names or addresses of any such persons as aforesaid, the company shall within the prescribed time, file with the registrar a notice of the alteration.

(*2*) Any process or notice required to be served on the company shall be sufficiently served, if addressed to any person whose name has been so filed as aforesaid, and left at or sent by post to the address which has been so filed.

(*3*) Every company to which this section applies shall in every year file with the registrar of the province in which the company has its principal place of business—

(*i*) in a case where by the law, for the time being in force, of the country in which the company is incorpora ed such company is required to file with the public authoritytan annual balance-sheet,—a copy of that balance-sheet : or

(*ii*) in a case where no such provision is made by the law, for the time being in force, of the country in which the company is incorporated,—such a statement in the form of a balance-sheet as such company would, if it were a company formed and registerd under this Act be required to file in accordance with the provisions of this Act ;

Provided that His Highness may, by notification in the Jammu and Kashmir Government Gazette subject to such restrictions and conditions, if any, as he may therein prescribe, exempt any such company or any class of such companies from this requirement.

(*4*) Every company to which this section applies and which uses the word "Limited" as part of its name, shall,—

(*a*) in every prospectus inviting subscriptions, for its shares of debentures in the State, state the country in which the company is incorporated ; and

(*b*) conspicuously exhibit on every place where it carries on business in the State the name of the company and the country in which the company is incorporated in letters easily legible in English and Urdu characters, and

(*c*) have the name of the company and of the country in which the company is incorporated mentioned in legible English characters in all bill-heads and letter paper and in all notices, advertisements and other official publications of the company.

(*5*) If any company to which this section applies fails to comply with any of the requirements of this section, the company, and every officer or agent of the company, shall be liable to a fine not exceeding five hundred rupees or, in the case of a continuing offence, fifty rupees for every day during which the default continues.

(*6*) For the purposes of this section—

(*a*) The expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;

(*b*) the expression "place of business" includes a share transfer or share registration office ;

(*c*) the expression "director" includes any person occupying the position of director, by whatever name called and

(*d*) the expression "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of the company.

(*7*) There shall be paid to the registrar for registering any document required by this section to be filed with him a fee of five rupees or such smaller fee as may be prescribed.

PART XI.

SUPPLEMENTAL.

Legal Proceedings, Offences, etc.

Cognizance of offences.

278. (*1*) No Court inferior to that of a Magistrate of the first class shall try any offence against this Act.

(*2*) Omitted.

(*3*) Notwithstanding anything in the Code of Criminal Procedure, every offence against this Act shall, for the purposes of the said Code, be deemed to be non-cognizable.

Applications of fines.

279. The Court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

Power to require limited company to give security for costs.

280. When a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

Power of Court to grant relief in certain cases.

281. If, in any proceeding before any Court against a director of a company for negligence or breach of trust, it appears to such Court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, that Court may relieve him either wholly or partly, from his liability on such terms as the Court may think proper.

Penalty for false statement.

282. Whoever in any return, report, certificate, balance-sheet or other document, required by or for the purposes of any of the provisions of this Act wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Penalty for improper use of word "Limited."

283. If any person or persons trade or carry on business under any name or title of which "Limited" is the last word, that person

or those persons shall, unless duly incorporated with limited liabil.ty, be liable to a fine not exceeding fifty rupees for every day upon which that name or title has been used.

284. For the purposes of this Act the law of insolvency in force in the Punjab shall be treated as the law of the State.

Punjab Law of insolvency applicable.

285 to 290. Omitted.

SCHEDULES.

THE FIRST SCHEDULE.

(See sections 2, 17, 18, 79, 266.)

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Preliminary.

1. In these regulations, unless the context otherwise requires, expressions defined in the Companies Act, or any statutary modification thereof in force at the date at which these regulations become binding on the company, shall have the meanings so defined; and words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include females, and words importing persons shall include bodies corporate.

Business.

2. The directors shall have regard to the restrictions on the commencement of business imposed by section 103 of the Companies Act, if, and so far as, those restrictions are binding upon the company.

Shares.

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company

may be issued with such preferred, deferred or other special rights, or such restriction, whether in regard to div dend, voting, return of share capital, or otherwise, as the company may from time to time by special resolutions determine.

4. If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a seperate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatus mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class.

5. No share shall be offered to the public for subscription except upon the terms that the amount payablə on application shall be at least five per cent. of the nominal amount of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of sections 101 and 104 of the companies Act, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon: Provided that, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of certificate for a share to one of several joint-holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding eight annas, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. No part of the funds of the company shall be employed in the purchase of, or in loans upon the security of, the company's shares.

Lien.

9. The company shall have a lien on evey share (not being a fully-paid share) for all moneys (whether presently payable or not) called or payable at a fixed time in respect

of that share, and the company shall also have a lien on all shares (other than fully-paid shares) standing registered in the name of the single person, for all moneys presently payable by him or his estate to the company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the director thinks fit, any share on which the company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of fourteen days after a notice in writing, stating, and demanding payment of such part of amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of his death or insolvency to the share.

11. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the share, and he shall not be bound to see to the application of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares.

12. The directors may from time to time make calls upon the members in respect of moneys unpaid on their shares, provided that no call shall exceed one-fourth of the nomial amount of the share, or be payable at less than one month from the last call; and each member shall (subject to receiving at least fourteen day's notice specifying the time or times of payments) pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest upon the sum at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment, but

the directors shall be at liberty to waive payment of that interest who ly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had become payab'e by virtue of a call duly made and notified.

16. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

17. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of the company in general meeting, six per cent.) as may be agreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares.

18. The instrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain holder of the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A B of , in consideration of the sum of rupees paid to me by C. D. of (hereinafter called "the said transferee"), do hereby transfer to the said transferee the share [*or* shares] numbered in the undertaking called the Company, Limited, to hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution thereof, and I, the said transferee, do hereby agree to take the said share [*or* shares] subject to the conditions aforesaid. As witness our hands the day of

Witness to the signatures of, etc.

20. The directors may decline to register any transfer of shares, not being fully-paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has a lien. The directors may

also suspend the registration of transfers during the fourteen days immediately preceding the ordinary general meeting in each year. The directors may decline to recognise any instrument of transfer unless:—

(*a*) a fee not exceeding two rupees is paid to the company in respect thereof; and

(*b*) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivors, or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognised by the company as having any title to the share.

22. Any person becoming entitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share or, instead of being registered himself, to make such transfer of the share as the deceased or insolvent person could have made; but the directors shall, in either case have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceassd or insolvent person before the death or insolvency.

23. A person becoming entitled to share by reason of the death or insolveney of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company.

Forfeiture of shares.

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

25. The notice shall name a further day (not earlier than

the expiration of fourteen days, from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forefeited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

27. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding, remain liable to pay to the company all moneys which at the date of forfeiture, were presently payable by him to the company in respect of the shares, but his liability shall cease if and when the company receive payment in full of the nominal amount of the shares.

29. A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any), nor shall his title to the share be effected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

30. The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by terms of issue of share, becomes payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

Conversion of shares into stock.

31. The directors may, with the sanction of the company previously given in general meeting, convert any paid-up

shares into stock, and may with the like sanction re-convert any stock into paid-up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same regulations, as and subject to which, the shares from which the stock arose might previously to conversion have been transferred, or as near thereto as circumstances admit but the directors may from time to time fix the minimum amount of stock transferable, and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the nominal amount of the shares from which the stock arose.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose, but no such privilege or advantage (except participation in the dividends and profits of the company) shall be conferred by any such aliquot part of stock as would not, if existing in shares, have conferred that privilege or advantage.

34. Such of the regulations of the company (other than those relating to share-warrants), as are applicable to paid-up shares shall apply to stock, and the words "share" and "shareholder" therein shall include "stock" and "stockholder."

Share-warrants.

35. The company may issue share-warrants, and accordingly, the directors may in their discretion, with respect to any share which is fully paid up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the directors may from time to time require as to the identity of the person signing the request, and on receiving the certificate (if any) of the share, and the amount of the stamp-duty on the warrant and such fee as the directors may from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrant is entitled to the shares therein specified, and may provide by coupons or otherwise for the payment of dividends, or other moneys, on the shares included in the warrant.

36. A share-warrant shall entitle the bearer to the shares included in it, and the share shall be transferred by the delivery of the share-warrant, and the provisions of the regulations of the company with respect to transfer and transmission of shares shall not apply thereto.

37. The bearer of a share-warrant shall, on surrender of the warrant to the company for cancellation, and on payment of such sum as the directors may from time to time prescribe, be have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of two clear days from the time of deposit, as if his name were inserted in the register of members as the holder of the shares included in the deposited warrant. Not more than one person shall be recognised as depositor of the share-warrant. The company shall, on two days' written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expressly provided, no person shall, as bearer of a share-warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company ; but the bearer of a share-warrant shall be entitled in all other respects to the same privileges and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

40. The directors may, from time to time, make rules as to the terms on which (if they shall think fit) a new share-warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

Alteration of Capital.

41. The directors may, with the sanction of an extraordinary resolution of the company, increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any direction to the contrary that may be given by the resolution sanctioning the increase of share capital, all new shares shall, before issue, be offered to such persons as at the date of the offer are entitled to receive notices from the company of general meetings in proportion, as nearly as the circumstances admit, to the amount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a

time within which the offer, if not accepted, will be deemed to be declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which (by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares) cannot, in the opinion of the directors, be conveniently offered under this article.

43. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture and otherwise as the shares in the original share capital.

44. The company may, by special resolution,—

(*a*) consolidate and divide its share capital into shares of larger amount than its existing shares;

(*b*) by sub-division of its existing shares or any of them, divide the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association, subject, nevertheless, to the provisions of paragraph (*d*) of sub-section (1) of section 50 of the Companies Act;

(*c*) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person;

(*d*) reduce its share capital in any manner and with, and subject to, any incident authorised, and consent required, by law.

General Meetings.

45. The statutory general meeting of the company shall be held within the period required by section 77 of the Companies Act.

46. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

47. The above-mentioned general meetings shall be called

ordinary meetings; all other general meetings shall be called extraordinary.

48. The directors may, whenever they think fit, call an extraordinary general meetings, and extraordinary general meetings shall also be called on such requisitions, or in default, may be called by such requisitionists, as provided by section 78 of the Companies Act. If at any time there are not within the State sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at General Meeting.

49. Fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place, the day and the hour of meeting and, in case of special business, the general nature of that business, shall he given in manner, hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting, to such persons as are, under the regulations of the company, entitled to receive such notices from the company; but the non-receipt of the notice by any member shall not invalidate the proceedings at any general meeting.

50. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting with the exception of sanctioning a dividend, the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and fixing of the remuneration of the auditors.

51. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided three members personally present shall be a quorum.

52. If within half an hour from the time appointed for the meeting a quorum is not present the meeting, if called upon the requisition of members, shall be dissolved: in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

53. The chairman, if any, of the board of directors shall

preside as chairman at every general meeting of the company.

54. If there is no such chaiman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting; or is unwilling to act as chairman, the members present shall choose some one of their number to be chairman.

55. The chairman may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

56. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by at least three members, and, unless a poll is so demanded, a declaration by the chairman that a resolution has on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

57. If a poll is duly demanded, it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

58. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

59. A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chairman of the meeting directs.

Votes of Members.

60. On a show of hands every member present in person shall have one vote. On a poll every member shall have

one vote for each share of which he is the holder.

61. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint-holders ; and for this purpose seniority shall be determined by the order in which the names stand in the register of member.

62. A member of unsound mind or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

63. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

64. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 80 of the Companies Act is in force.

65. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorised in writing, or, if the appointor is a corporation, either under the common seal, or under the hand of an officer or attorney so authorised. No person shall act as a proxy unless either he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

66. The instrument appointing a proxy and the power of attorney or other authority (if any), under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than seventy-two hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

67. An instrument appointing a proxy may be in the following form, or in any other form which the directors shall approve :—

Company, Limited.

"I of in the district being a member of the Company, Limited, hereby appoint of as my proxy to vote for me and on my behalf at the [ordinary or extraordinary, as the case may be] general meeting of the company to be held

on the day of and at any adjournment thereof".

Signed this day of

Directors.

68. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subsc.ibers of the memorandum of association.

69. The remuneration of the directors shall from time to time be determined by the company in general meeting.

7o. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to comply with the provisions of section 85 of the Companies Act.

Powers and duties of Directors.

71. The business of the company shall be managed by directors, who may pay all expenses incurred in getting up and registering the company, and may exercise all such powers of the company as are not by the Companies Act or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulation of these articles, to the provisions of the said Act and to such regulations being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in generel meeting but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

72. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration (whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another) as they may think fit and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the rotation of retirement of directors, but his appointment shall be subject to determination *ipso facto* if he ceases from any cause to be a director, or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

73 The amount for the time being remainig undischarged of moneys borrowed or raised by the directors for the pur-

poses of the company (otherwise than by the issue of share capital) shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

74. The directors shall duly comply with the provisions of the Companies Act or any statutory modification thereof for the time being in force, and in particular with the provision in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it and to keeping a register of the directors, and to sending to the registrar an annual list of members, and a summary of particulars relating thereto and notice of any consolidation or increase of share capital or conversion of shares into stock and copies of special resolutions and a copy of the register of directors and notifications of any changes therein.

75. The directors shall cause minutes to be made in books provided for the purpose—

(*a*) of all appointments of officers made by the directors;

(*b*) of the names of the directors present at each meeting of the directors and of any committee of the directors;

(*c*) of all resolutions and proceedings at all meetings of the company, and, of the directors and of committees of directors;

and very director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal.

76. The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the board of directors, and in the presence of at least two directors and of the secretary or such other person as the directors may appoint for the purpose; and those two directors and secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

Disqualification of Directors.

77. The office of director shall be vacated if the director—

(*a*) ceases to be a director by virtue of section 85 of the Companies Act; or

(*b*) holds, or any partner of his, or the firm of which he is a member, holds, any other office of profit under the company except that of managing director or manager; or

(*c*) is adjudged insolvent ; or

(*d*) is found lunatic or becomes of unsound mind ; or

(*e*) is concerned or participates in the profits of any contract with the company ; or

(*f*) is punished with imprisonment for a term exceeding six months ;

Provided, however, that no director shall vacate his office by reason of his being a member of any company which has entered into contracts with, or done any work for, the company of which he is director ; but a director shall not vote in respect of any such contract or work, and if he does so vote, his vote shall not be counted.

Rotation of Directors.

78. At the first ordinary meeting of the company, the whole of the directors shall retire from office, and at the ordinary meeting in every subsequent year one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

79. The directors to retire in every year shall be those who have been longest in office since their last election, but as between persons who became directors on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.

80. A retiring director shall be eligible for re-election.

81. The company at the general meeting at which a director retires in manner aforesaid may fill up the vacated office by electing a person thereto.

82. If at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week at the same time and place, and, if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors or such of them as have not had their places filled up shall be deemed to have been re-elected at the adjourned meeting.

83. The company may from time to time in general meeting increase or reduce the number of directors, and may also determine in what rotation the increased or reduced number is to go out of office.

84. Any casual vacancy occurring on the board of directors may be filled up by the directors, but the person so chosen shall be subject to retirement at the same time as if he

had become a director on the day on which the director in whose place he is appointed was last elected a director.

85. The directors shall have power at any time, and from time to time, to appoint a person as an additional director, who shall retire from office at the next following ordinary general meeting, but shall be eligible for election by the company at that meeting as an additional director.

86. The company may by extraordinary resolution remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he has become a director on the day on which the director in whose place he is appointed was last elected a director.

Proceedings of Directors.

87. The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time, summon a meeting of directors.

88. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall (when the number of directors exceeds three) be three.

89. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the company, but for no other purpose.

90. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may chose one of their number to be chairman of the meeting.

91. The directors may delegate any of their powers to committees consisting of such member or members of their

body as they think fit ; any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

92. A committee may elect a chairman of their meetings; if no such chairman is elected, or if at any meeting the chairman is not persent within five minutes after the time appointed for holding the same, the members present may choose one of their member to be a chairman of the meeting.

93. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

94. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall notwithstanding that it be afterwards discovered that their was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly apppointed and was qualified to be a director.

Dividends and Reserve.

95. The company in general meeting may declare dividends, but no dividends shall exceed the amount recommended by the directors.

96. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

97. No dividends shall be paid otherwise than out ofprofits.

98. Subject to the rights of persons (if any) entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares. No amount paid on a share in advance of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

99. The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalising dividends, or for any other purpose to which the profits of the company may be properly applied, and pending such application may, at the

114. A notice may be given by the company to the joint-holders of a share by giving the notice to the joint-holder named first in the register in respect of the share.

115. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at the address (if any) in the State supplied for the purpose by the persons claiming to be so entitled, or (until such an address has been so supplied) by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

116. Notice of every general meeting shall be given in some manner hereinafter authorised to (*a*) every member of the company (including bearers o share-warrants) except those members who (having no registered address within the State have not supplied to the company an address within the State for the giving of notices to them, and also to (*b*) every person entitled to a share in consequence of the death or insolvency of a member, who, but for his death or insolvency, would be entitled to receive notice of the meeting. No other person shall be entitled to receive notices of general meeting.

TABLE B.

(See sections 249 and 262.)

TABLE OF FEES TO BE PAID TO THE REGISTRAR.

I—By a Company having a share capital.

		Rs.	A.	P.
1.	For registraiion of a company whose nominal share capital does not exceed Rs. 20,000, a fee of ..	40	0	0
2.	For registration of a company whose nominal share capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital (that is to say)—			
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 ..	20	0	0
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees after the first 50,000 rupees up to 10,00,000 ..	5	0	0
	For every 10,000 rupees of nominal share capital, or part of 10,000 rupees, after the first 10,00,000 rupees ..	1	0	0

		Rs.	A.	P.
3.	For registration of any increase of share capital made after the first registration of the company, the same fees per 10,000 rupees or part of 10,000 rupees, as would have been payable if such increased share capital had formed part of the original share capital at the time of registration. Provided that no company shall be liable to pay in respect of nominal share capital on registration, or afterwards, any greater amount of fees than 1,000 rupees taking into acc unt in the case of fees payable on an increase of share capital after registration, the fees paid on registration.			
4.	For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registratration under this Act, the same fee as is charged for registring a new company.			
[1][5.	For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the registrar by a reciever or the statement required to be filed with the registrar by the liquidator in a winding up ..	5	0	0
6.	For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of	5	0	0

II.—By a company not having a share capital.

1.	For registration of a company whose number of members, as stated in the articles of association, does not exceed 20 ..	40	0	0
2.	For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100 ..	100	0	0
3.	For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
4.	For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of ..	400	0	0
[2][5.	For registration of any increase on the number of members made after the registration of the company, the same fees as would have been payable [in respect of such increase] if such increase had been stated in the articles of association at the time of registration ..	[*	*	*]

[1]For reduced fees in certain matters see Notification VI-L/91 Chapter I. Part I. Schedule Published in Government Gazette dated 2nd Phagan 1992.

[2]Amended by Notification VI-L/91 Chapter I Part I Schedule published in Government Gazette dated 2nd Phagan 1992.

		Rs.	A.	P.
	Provided that no one company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members taking into account the fee paid on the first registration of the company.			
6.	For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.			
[1]7.	For filing any document by this Act required or authorised to be filed other than the memorandum or the abstract required to be filed with the registrar by a receiver or the statement required to be filed with the registrar by the liquidator in a winding up ..	5	0	0
8.	For making a record of any fact by this Act authorised or required to be recorded by the registrar, a fee of	5	0	0

COUNCIL ORDER No. 308 OF 1935.

SUBJECT :—*Revenue Minister's Memo No. 1113-C. I. M.-43, dated 2nd April 1935, regarding Draft Notification relating to Stamp duty or fee to be paid by the Companies applying for registration under section 25 of the Companies Act No. XI of 1977 in force in the State.*

The fee to be paid under section 249 of the Jammu and Kashmir Companies Act No. XI of 1977 and Table 'B' of the said Act for the Registration of an Association, not for profit under section 26 of the said Act, when the number of members is stated in the Articles of Association to exceed twenty or to be unlimited shall not exceed Rs. 50.

9th May 1935.

[1]For reduced fees in certain matters see Notification VI-L/91 Chapter I, Part I published in Government Gazette dated 2nd Phagan, 1992.

THE SECOND SCHEDULE.

(See section 98.)

STATEMENT IN LIEU OF PROSPECTUS.

filed by

LIMITED

pursuant to section 98 of the Companies Act.

Presented for filing by

THE COMPANIES ACT.

LIMITED.

STATEMENT IN LIEU OF PROSPECTUS.

The nominal share capital of the company.	**Rs.**
Divided into ...	**Shares of Rs. each.** " " " " " "
Names, descriptions and addresses of directors or proposed directors, and of the managers or proposed managers.	
Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	**1. Shares of Rs. fully paid**
The consideration for the intended issue of those shares and debentures.	**2. Shares upon which Rs. per share credited as paid** **3. Debentures Rs.** **4. Consideration.**

The nominal of share capital of the company.	Rs.
Names and addresses of [1] vendors of property purchased or acquired, [2] or proposed to be purchased or acquired by the company. Amount in (cash, shares or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for good will.	Total purchase price ... Rs. Cash .. .. .. „ Shares .. .. „ Debentures .. .. „ Goodwill .. .. Rs.
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company or Rate of the commission ..	Amount paid. „ payable. Rate per cent.
Estimated amount of preliminary expenses	Rs.
Amount paid or intended to be paid to any promoter. Consideration for the payment. ..	Name of promoter Amount Rs. Consideration :—
Dates of, and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	

[1] For definition of vendor, see section 94 of the Companies Act.
[2] See section 95 of the Companies Act.

The nominal share capital of the company.	Rs.
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance-sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signature of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

THE THIRD SCHEDULE.

FORM A.

(See sections 6 and 151.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st.—The name of the company is "The Eastern Carrying Company Limited."

2nd.—The registered office of the company will be situate in the province of Jammu.

3rd.—The objects for which the company is established are "the conveyance of passengers and goods between such places as the company may from time to time determine, and the doing all such other thing as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Description of Subscirbers.	Number of shares taken by each Subscriber.
1. A. B. of, Merchant	200
2. C. D., „ „	25
3. E. F., „ „	30
4. G. H., „ „	40
5. I. J., „ „	15
6. K. L., „ „	5
7. M. N., „ „	10
Total shares taken ..	325

Dated the day of 194 .

Witness to the above signatures,

X. Y., of

FORM B.

(See sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL.

Memorandum of Association.

Ist.—The name of the company is "The Mutual Srinagar Boats Marine Association, Limited".

2nd.—The registered office of the company will be situate in Srinagar.

3rd.—The object for which the company is established are "the mutual insurance of boats belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above object".

4th.—The liability of the members is limited.

5th—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the co ts, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorndum of association.

Names, Addresses and Descriptions of Subscribers.

"1. A. B. of
"2. C. D. of
"3. E. F. of
"4. G. H. of
"5. I. J. of
"6. K. L. of
"7. M. N. of

Dated the day of

Witness to the above signatures.

X. Y., of

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION.

Number of Memb rs.

1. The company for the purpose of registeration is declared to consist of five hundred members.

2. The directors hereinafter mentioned may, whenever the business or the association requires it, register an increase of members.

Definition of Members.

3. Every person shall be deemed to have agreed to become a member of the company who insures any boat or share in a boat in pursuance of the regulations hereinafter contained.

General Meetings.

4. The first general meeting shall be held at such time, not being less than one month nor more than three months after the incorporation of the company, and at such place, as the directors may determine.

5. A general meeting shall be held once in every year at such time (not being more than fifteen months after the holding of the last preceding general meeting) and place as may be prescribed by the company in general meeting, or, in default, at such time in the month following that in which the anniversary of the company's incorporation occurs, and at such place, as the directors shall appoint. In default of a general meeting being so held, a general meeting shall be held in the month next following, and may be called by any two members in the same manner as nearly as possible as that in which meetings are to be called by the directors.

6. The above-mentioned general meetings shall be called ordinary meetings ; all other general meetings shall be called extraordinary.

7. The directors may, whenever they think fit, and shall, on a requisition made in writing by any five or more members, call an extraordinary general meeting.

8. Any requisition made by the members must state the object of the meeting proposed to be called, and must be signed by the requisitionists and deposited at the registered office of the company.

9. On receipt of the requisition the directors shall forth-

with proceed to call a general meeting: if they do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists or any other five members may themselves call a meeting.

Proceedings at General Meetings.

10. Fourteen days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of the business, shall be given to the members in manner hereinafter mentioned, or in such other manner (if any) as may be prescribed by the company in general meeting; but the non-receipt of such a notice by any member shall not invalidate the proceedings at any general meeting.

11. All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of remuneration of the auditors.

12. No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of the business. The quorum shall be ascertained as follows (that is):—if the members of he company at the time of the meeting do not exceed ten in number the quorum shall be five; if they exceed ten, there shall be added to the above quoram one for every five additional members with this limitation, that no quorum shall in any case exceed ten.

13. If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if called on the requisition of the members shall be dissolved; in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

14. The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

15. If there is no such chairman, or if at any meeting he is not present at the the time of holding the same, the members present shall choose some one of their number to be chairman of that meeting.

16. The chairman may, with the consent of the mee

adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

17. At any general meeting, unless a poll is demanded by at leaset three members, a declartion by the chairman that a resolution has been carried and an entry to that effect in the book of proceedings of the company, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

18. If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

Votes of Members.

19. Every member shall have one vote and no more.

20. If any member is a lunatic or idiot, he may vote by his committee or other legal guardian.

21. No member shall be entitled to vote at any meeting unless all moneys due from him to the company have been paid.

22. On a poll votes may be given either personally or by proxy : Provided that no company shall vote by proxy as long as a resolution of its directors in accordance with the provisions of section 3o of the Companies Act is in force. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation under its common seal.

23. (*1*) No person shall act as a proxy unless he is a member, or unless he is appointed to act at the meeting as proxy for a corporation.

(*2*) The instrument appointting him shall be deposited at the registered office of the company not less then forty-eight hours before the time of holding the meeting at which he proposes to vote.

24. Any instrument appointing a proxy shall be in the following form :

Company, Limited,

I, , of
being a Member of the Company, Limited,
hereby appoint of
as my proxy, to vote for me

and on my behalf at the (ordinary or extraordinary, as the case may be) general meeting of the company to be held on the day of and at any adjournment thereof.

Signed this day of

Directors.

25. The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

26. Until directors are appointed, the subscribers of the memorandum of association shall, for all the purposes of the Companies Act be deemed to be directors.

Powers of Directors.

27. The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not by the Companies Act or by any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the company in general meeting: but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

Elections of Directros.

28. The directors shall be elected annually by the company in general meeting.

Business of Company.

(Here insert *rules as to mode in which business of insurance is to be conducted.*)

Audit.

29. Auditors shall be appointed and their duties regulated in accordance with sections 144 and 145 of the Companies Act or any statutory modification thereof for the time being in force, and for this purpose the said sections shall have effect as if the word "members" were substituted for "share holders," and as if "first general meeting" were substituted for "statutory meeting."

Notices.

30. A notice may be given by the company to any member either personally, or by sending it by post to him to his registered address.

31. Where a notice is sent by post, service af the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Names, Addresses and Descriptions of Subscribers.

" 1. A. B. of

" 2. C. D. of

" 3. E. F. of

" 4. G. H. of

" 5. I. J. of

" 6. K. L. of

" 7. M. N. of

Dated the day of 19 .

Witness to the above signatures,
X. Y., of

FORM C.

(See sections 7 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Snowy Range Hotel Company, Limited."

2nd.—The registered office of the company will be situate in the Province of Kashmir.

3rd.—The objects for which the company is established are

"the facilitating travelling in the Snowy Range, by providing hotels and conveyances by water and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th.—The liability of the members is limited.

5th.—Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is member, or within one year afterwards for payment of the debts and liabilities of the company, contracted b fore he ceases to be a member, and the cost, charges and expenses of winding up the same and for the adjustment of the rights of the contributaries amongst themselves, such amount as may be required, not exceeding fifty rupees.

6th.--The share capital of the company shall consist of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	200
"2. C. D. of	25
"3. E. F. of	30
"4. G. H. of	40
"5. I. J. of	15
"6. K. L. of	5
"7. M. N. of	10
Total shares taken ..	325

Dated the *day of* *19*

Witness to the above signatures.

X Y., of

Articles of Association to accompany preceding Memorandum of Association.

1. The share capital of the company is five hundred thousand rupees, divided into five thousand shares of one hundred rupees each.

2. The directors may, with sanction of the company in general meeting, reduce the amount of shares in the company.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A of the Companies Act shall be deemed to be incorporated with these articles and to apply to the company.

Names, Addresses and Descriptions of Subscribers.

Merchant

"1. A. B. of

"2. C. D. of

"3. E. F. of

"4. G. H. of

"5. I. J. of

"6. K. L. of

"7. M. N. of

Dated the *day of* *19*

Witness to the above signatures.
X. Y., of

FORM D.

(See sections 8 and 151.)

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY HAVING A SHARE CAPITAL.

Memorandum of Association.

1st.—The name of the company is "The Patent Stereotype Company.

2nd.—The registered office of the company will be situate in the Province of Jammu.

3rd.—The objects for wh ch the company is established are " the working of a patent method of founding and casting stereotype plates of which method P. Q., of Jammu is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set apposite our respective names.

Names, Addresses and Descriptions of Subscribers.	Number of shares taken by each Subscriber.
"1. A. B. of	3
"2. C. D. of	2
"3. E. F. of	1
"4. G. H. of	2
"5. I. J. of	2
"6. K. L. of	1
"7. M. N. of	1
Total shares taken ..	12

Dated the *day of* 19 .

Witness to the above signatures.
X. Y., of

Articles of Association to accompany the preceding Memorandum of Association.

1. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.

2. All the articles of table A of the Companies Act shall be deemed to be incorporated with these articles, and to apply o the company.

Names, Addresses and Decriptions of Subscribers.

"1. A. B. of , merchant.

"2. C. D. of

"3. E. F. of

"4. G. H. of

"5. I. J. of

"6. K. L. of

"7. M. N. of

Dated the *day of* 19 .

Witness to the above signatures.

X. Y., of

FORM E.

AS REQUIRED BY PART II OF THE ACT.

(*See section 32.*)

Summary of Share Capital and Shares of the Company, Limited, made up to the day of 19 (being the day of the first ordinary general meeting in 19).

Nominal share capital Rs. divided { shares of Rs. each. / shares of Rs. each.

Total number of shares taken up[1] to the day of 19 which number must agree with the total shown in the list as held by existing members.

Number of shares issued subject to payment wholly in cash.

Number of shares issued as fully paid up otherwise than in cash ... .

[1]When there are shares of different kinds or amounts (*e g.* Preference and Ordinary or Rs. 200 or Rs 100), state the numbers and nominal values separately.

Number of shares issued as partly up to the extent of per shares otherwise than in cash.

[1]There has been called up on each—of shares .. Rs.

There has been called up on each—of shares .. Rs.

There has been called up on each—of shares .. Rs.

[2]Total amount of calls received, including payments on application and allotment } Rs.

Total amount (if any) agreed to be considered as paid on shares which have been issued fully paid up otherwise than in cash .. } Rs.

Total amount (if any) agreed to be considered as paid n shares which have been issued as partly paid up to the extent of per share } Rs.

Total amount of calls unpaid .. Rs.

Total amount (if any) of sums paid by way of commission in respect of shares or debentures or allowed by way of discount since date of last summary } Rs.

Total amount (if any) paid on [3]shares forfeited .. Rs.

Total amount shares and stock for which share-warrants are outstanding } Rs.

Total amount of share-warrants issued and surrendered respectively since date of last summary } Rs.

Number of shares or amount of stock comprised in each share-warrent } Rs.

Total amount of debt due from the company in respect of all mortgages and charges which are required to be registerd with the registrar under this Act } Rs.

[1]Where various amounts have been called or there are shares or diffrent kinds, state them separately.

[2]Include what has been received on forfeited as well as on existing shares.

[3]State the aggregate number of shares forfeited.

List of persons holding shares in the Company, Limited, on the day of 19 . and of persons who have held shares herein at any time since the date of the last return, showing their names and addresses and an account of the shares so held.

Folio in register ledger containing particulars.	NAMES, ADDRESSES AND OCCUPATIONS.					ACCOUNT OF SHARES.						
	Name in full.	Name,	Father's	Address.	Occupation or caste,	[1]Number of shares held by existing Members at date of Return.	[2]Number.	Date of Registration of Transfer.	[3]Number.	Date of Registration of Transfer.	[4]Particulars of Shares Transferred since the date of the last return by persons who are still Members	[4]Particular shares transferred since the date of the last return by persons who have ceased to be members.

Names and addresses of the persons who are the directors of the , Limited, on the day of 19 ,

Names.	Addresses.

Names and addresses of the persons who are the managers of the , Limited, on the day of 19 .

Names.	Addresses

NOTE.—Banking companies must add a list of all the places of business.

I, , do hereby certify that the above list and summary truly and correctly states the facts as they stood on the day of 19 .

(Signature)_____

(State whether director, manager or secretary.)

FORM F.

(See section 132.)

_____ LIMITED

Balance-sheet as at _____ 19 .

	Rs.	As.	P.	Rs.	As.	P.		Rs.	As.	P.	Rs.	As.	P.
CAPITAL AND LIABILITIES.							PROPERTY AND ASSETS.						
CAPITAL—							FIXED CAPITAL EXPENDITURES.				..	..	..
Authorised Capital..shares of Rs.....each.	..	..	..				(Distinguishing as for as possible between expenditure upon goodwill, land, buildings, leaseholds, plant, machinery furniture, development of property, patents, trade marks and designs, interest paid out of Capital during construction, etc. and stating in every case the original cost and the total Depreciation written off under each head.)						
Issued Capital....shares of Rs. .....each.	..	..	..										
Subscribed Capital.....shares of Rs.....each.	..	..	..										
Amount called up at Rs....per share.	..	..	..										
Less—Calls unpaid ..	..	..	..				PRELIMINARY EXPENSES ..				..	...	..

Add—Forfeited shares (amount paid up).	..	..	..	..	..	..	COMMISSION OR BROKERAGE..							..	..	..			
							(Commission or Brokerage paid for underwriting or placing shares or debentures until written off.)							..	..	..			
RESERVE FUND OR DEVELOPMENT FUND.				..	..	..													
ANY SINKING FUND ..				..	..	..													
ANY OTHER FUND CREATED OUT OF NET PROFITS.				..	..	..	STORES AND SPARE GEAR ..							..	..	..			
							LOOSE TOOLS ..							..	..	..			
ANY PENSION OR INSURANCE FUND.				..	..	..													
							LIVE-STOCK ..							..	..	..			
PROVISION FOR BAD AND DOUBTFUL DEBTS.				..	..	..	STOCK IN TRADE ..							..	..	..			
							Stating mode of valuation, *e. g.*, cost or market-value.)												
LOANS ON MORTGAGE OR MORTGAGE DEBENTURE BONDS.				..	..	..													
							BILL OF EXCHANGE ..							..	..	..			
LOANS OTHERWISE SECURED ..				..	..	..													
(Stating the nature of security)							BOOK DEBTS ..							..	..	..			
LOANS UNSECURED.							(Distinguishing in the case of a Bank between those considered good and in respect												
INTEREST ..				..	..	..	of which the Bank is fully secured and those considered												
Accrued on Mortgages, Debentures or other Secured Loans.							good for which the Bank holds no security other than the debtor's personal security, and distinguishing in all												
UNCLAIMED DIVIDENDS ..				..	..	..	cases between debts consi-												

LIABILITIES	...	..			..	..	..	dered good and debts considered doubtful or bad. Debts due by directors or other officers of the company or any of them either severally or jointly with any other persons to be separately stated in all cases.)								
For Goods spplied	..	..	..	..												
„ Expenses	..	..	..	..												
„ Acceptances	..	..	..	..												
„ Other Finance	..	..	..	..												
ADVANCE PAYMENTS AND UNEXPIRED DISCOUNTS.								ADVANCES	..				..	..	..	
(For the portion for which valu has still to be given, *e. g.*, in the case of the following classes of Companies—Newspaper, Fire Insurance, Theatre, Club, Banking, Companies, etc.)					..	..	..	(Recoverable in each or in kind or for value to be received, *e. g.*, Rate, Taxes, Insurance, etc.)								
								INVESTMENTS	..				..	..	..	
PROFIT AND LOSS	..				..	..	..	(Nature of Investment and mode of valuation, *e. g.*, cost of market-value.)								
Balance as previous Balance Sheet.		..	..	..				INTEREST ACCRUED ON INVESTMENTS.					..	..	..	
Less—Appropriation thereof	..	..	..	..				CASH AND OTHER BALANCES.					..	..	..	
Balance brought forward	..	..	..	..				Amount in hand	..	..	..	..				

Profit since last Balance Sheet..	..	..	..				Balances with Agents and Bankers (in detail showing whether on doposit or current accounts, etc.)	..	..	..		
(*N. B.*—These details need not be given if the same be contained in a Profit and Loss account attached to the Balance Sheet.)							Profit and Loss (giving, in the case of a debit balance, details as far as possible as in the case of a credit balance.)				..	.. ..
CONTINGENT LIABILITIES—				..	..	..						
Claims against the Company not acknowledged as debts.	..	..	..									
Moneys for which the Company is contingently liable.	..	..	..									
Arrears of Cumulative Preference Divinends.	..	..	..									

FORM G.

(See section 136.)

FORM OF STATEMENT TO BE PUBLISHED BY BANKING AND INSURANCE COMPANIES AND DEPOSIT, PROVIDENT, OR BENEFIT SOCIETIES.

[1]The share capital of the company is Rs. divided into shares of each

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth of June) were :—

Debts owing to sundry persons by the company.

Under decree, Rs.

On mortgages or bonds, Rs.

On notes, bills or hundies, Rs.

On other contracts, Rs.

On estimated liabilities, Rs.

The assets of the company on that day were.—

Government securities [stating them]., Rs.

Bills of exchange, hundis and promissory notes, Rs.

Cash at the Bankers, Rs.

Other securities, Rs.

THE FOURTH SCHEDULE.

Omitted.

ADVOCATE
DEPARTMENT OF LAW
UNIVERSITY OF KASHMIR
NO 2081 DATE 14/12/2020

[1] If the company has no capital divided into shares, the portion of the statement relating to capital and share must be omitted.

Acc. No. 32271.

Class No. ۸۹۱٫۴۳ Book No. ۲۰۸۸ ا

Author امیر، یاسد اللہ

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